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FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

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A digest of the reported cases (from 175

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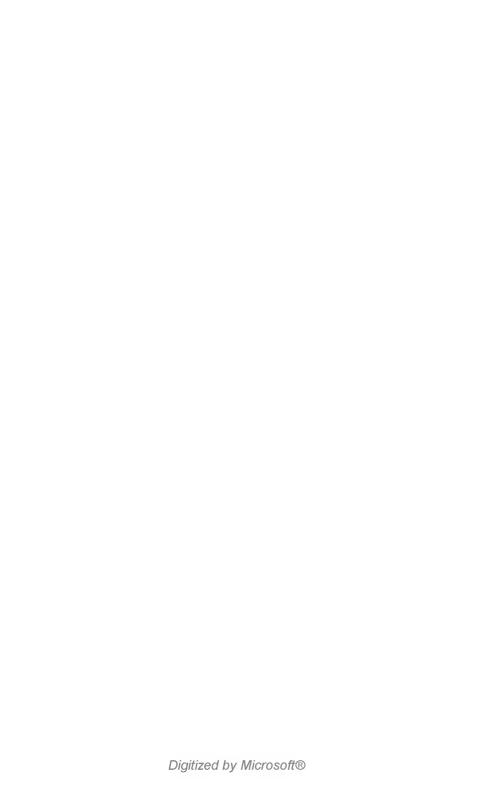




# FISHER'S DIGEST

OF

# CRIMINAL LAW.



# A DIGEST

O F

# THE REPORTED CASES

(FROM 1756 TO 1870, INCLUSIVE,)

RELATING TO

# CRIMINAL LAW,

CRIMINAL INFORMATION, AND EXTRADITION,

FOUNDED ON HARRISON'S ANALYTICAL DIGEST.

BY R. A. FISHER, ESQ.,
OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

San francisco: SUMNER WHITNEY & CO. 1871.

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EXCELSIOR PRESS:

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536 Clay Street.

This volume is a full reprint, from Mr. Fisher's Common Law Digest, of the titles Criminal Law and Criminal Information, and will be found a complete compendium of the English Law of Crimes and Punishments, upon which our American Criminal Law is founded.

Some of the cases being based upon statutory provisions, it was deemed wise to include the digests of statutory enactments which precede the notes of cases in Mr. Fisher's work and in this volume.

The later decisions, from the tenth and eleventh volumes of Cox Criminal Cases, have been added under their appropriate heads. Each note has been compared with the original volumes of reports, and the citations have been corrected and verified.

To prosecuting officers of the State and Federal Governments, and to lawyers who make a specialty of Criminal Law, this volume will need no other recommendations than the names of its compilers, Messrs. Harrison and Fisher, and the price at which it is offered.

A. H.

San Francisco Law Library, November, 1871.



# A LIST

OF THE

# Abbreviations Used and the Volumes Cited

## IN THIS DIGEST.

A. & E	. Adolphus & Ellis	. Queen's Bench.
Arn. & H	.Arnold & Hodges	Queen's Bench.
B. & A	.Barnewall & Alderson	.King's Bench.
B. & Ad	.Barnewall & Adolphus	, King's Bench
	.Barnewall & Cresswell	
	. Bail Court Cases-Lowndes & Maxwe	
	. Bail Court Reports-Saunders & Cole	
B. & S	.Best & Smith	Queen's Bench.
Bell's C. C	Bell's Criminal Cases	Criminal Appear
Bing	.Bingham	Common Pleas.
	.Bosanquet & Puller	
B. L	Botts' Poor Law	• •
B. & B	.Broderip & Bingham	. Common Plcas.
Bro. P. C	Brown's Cases in Parliament	House of Lords.
Burr	Burrow	King's Bench.
C	.Lord Chancellor	••
Cald	Caldecott's Scttlement Cases	King's Beneh.
Camp	Campbell	Nisi Prius.
Car. C. L	Carrington's Criminal Law	
Car. & M	Carrington & Marshman	Nisi Prins.
C. & K	Carrington & Kerwan	Nisi Prius.
C. & P	Carrington & Payne	Nisi Prins.
Chit	Chitty	. King's Bench.
C. & F	Clark & Finnelly	. House of Lords.
	Common Bench	
C. B. N. S	Common Bench, New Series (Scott).	Queen's Bench, C. P. Ex.
	Common Law Reports, 1855-56	
Cowp	. Cowper	King's Bench.
	Cox	
	Cox Criminal Cases	
C. & J	Crompton & Jervis	Exchequer.
C. & M	Crompton & Meeson	Exchequer.
D. & M	Davison & Merivale	Queen's Bench.
Dears. C. C	Dearsly's Crown Cases	Criminal Appeal.
Dears. & B. C. C	Dearsly & Bell's Crown Cases	Criminal Appeal.
	Denison	
Dougl	Douglas	King's Bench.
D. P. C	Dowling Practice Cases	Queen's Bench, C. P. Ex.
D. N. S	Dowling's New Series	Queen's Bench, C. P. Ex.
	Dowling & Lowndes	
D. & R	Dowling & Ryland	King's Bench.
D. & R. N. P. C	. Dowling & Ryland	Nisi Prius Cases.
Drew. & Sm	Drewry & Smalc	Vice Chancellors.
East	East	King's Bench.
East P. C	East	•• .
El. & Bl	. Ellis & Blackburn	Qucen's Bench.
El., Bl. & El	Ellis, Blackburn & Ellis	Queen's Bench.
El. & El	Ellis & Ellis Digitized by Microsoft®	Queen's Bench.
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Esp	. Espinasse	.Nisi Prius.
Eveh	Exchequer Reports (Welshy, H. & G.)	. Exchequer.
Erch Cham	Evolution Chamber	· zakonoquot.
Exen. Cham	. Exchequer Chamber	Mini Maine
F. & F	Foster & Finlason	. Nisi Frids.
Gale	.Gale	. Exchequer.
G. & D	. Gale & Davison	. Exchequer.
Gow	.Gow	. Nisi Prius.
H BI	.Henry Blackstone	Common Pleas.
TI & D	.Harrison & Rutherford	Common Pleas
H. & K	. Harrison & Ivitheriord	NI ' D.J
Holt	.Holt	. Nisi Prins.
H. & N	.Hurlstone & Norman	.Exchequer.
H &: W	. Huristone & Walmslev	. Exenequer.
Tr. C. L.	Irish Common Law, Series of 1867 Irish Common Law Reports	
In C. I. B	Irish Common Law Reports	
T	Jurist	All the Courts
an	T ' NAT COMPANY	.An me Courts.
Jur., N. S	.Jurist, New Series	****
Kay	Jurist, New Series	. Vice Chancellor.
K. &.J	. Kay & Johnson	. vice Chancehor.
Ld Kenyon.	.Lord Kenyon's Notes of Cases	. King's Bench.
T. T. Chan	.Law Journal, New Series	Chancery
T. T. C. D.	Law Journal	Common Place
Tr. f. C. L	Taw Journal	. Common I leas.
L. J. Exch	Law Journal	ixenequer.
L. J. M. C	.Law Journal	. Magistrate's Cases.
L. B. C. C	Law Reports Law Times, New Series	. Crown Cases, Reserved.
TTNS	Law Times New Series	. All the Courts.
Tarah C C	Leach Crown Cases	
Leach C. C	T i l g O Oue C	· Euchasses Chambas
L. & C. C. C	Leigh & Cave, Crown Cases	Exenequer Chamber.
Lewin C. C	Lewiu's Crown Cases	.Crown.
Lofft	LofftLowndes, Maxwell & Polloek	. King's Bench.
T. M & P	Lowndes, Maxwell & Pollock	.Bail Court.
M&G	. Manning & Granger	Common Pleas.
M 0 W7	Mosson & Walshy	Evolution
MI. & W	.Meeson & Welsby	E - l Chamban
M. C. C	Moody Crown Cases	. Exenequer Chamber.
M & M	. Moody & Malkin	Nisi Prius.
M. & P	. Moore & Payne	. Common Pleas.
M & Rob	Moody & Robinson	. Nisi Prins.
M & D	Manning & Ryland	King's Reach
MI. & D.	Manifeld Column	King's Banch
M. & S	Maule & Selwyn	. Ming's Dench.
Marsh	. Marshall	. Common Pleas.
Magne	I R Monre	Common Pleas.
Moore P. C. C	. Moore's Privy Council Cases	. Privy Council.
Moore P C C N S	. Moore's Privy Council Cases, New Serie	es
Modie 1. C. C. II. B.	Bosanquet & Puller, New Reports	Common Pleas
N. R	No. 11. 2 Manning	Wing's Donah
N. & M	.Nevile & Manning	. King s Deneil.
N. & P	. Nevile & Perry	Queen's Bench.
New Sess. Cas	. Carrow. Hamerton & Allen	. All the Courts.
Peake	Peake	. Nisi Prius.
D & D	Perry & Davison	Oueen's Bench
Dulas	Price	Exchange
Price	O and Dank (Adalahan & Dilla N. S.	. Dachoquer.
Q. B	. Queen's Bench (Adolphus & Ellis, N. S	9.)
Railw. Cas	. Railway Cases (Nicholl, Hare and others	(a) All the Courts.
Russ. C. & M	Russell on Crimes and Misdemeanors.	•
R&RCC.	.Russell & Ryan	.Crown Cases.
D & M	Ryan & Moody	Nici Princ
D. C. M. D.	Coatt Nove Donorto	Common Dless
Scott N. R	Scott New Reports	. Common 1 icas.
Selw. N. P	.Selwyn's	. Nisi Prius.
Sim. N. S	.Simon's New Series	. Chancery.
Smith	Smith	. King's Bench.
Stork	.Starkie	Nisi Prius.
M	Tourses	Common Plags
Taunt	. Taulitoii	Win al. B. mah
I. K	Taunton	. King s Deneth.
T. & M	Temple & Mew	. Criminal Appeal.
Ves	. Vcsey	. Chancery.
W. W. & D.	. Willmore, Wollaston & Davison	.Queen's Bench.
W W & H	. Willmore Wollaston & Hodges	. Queen's Bench.
TX7:10 LL	Wilson	King's Reach & C. P
W IIS	Wilson. Sir William Blackstone	Tings Denci & C. F.
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White v. Edmunds, Apprehension and Arrest, 603.

White, In re, Juries, etc., 521.

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Wild's Case, Murder, etc., 337.

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Wilkinson v. Dutton, Assault and Battery, 57.

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#### ADDENDA.

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Reg. v. Adams, Forgery, 214.

Reg. v. Badger, Crim. Inf., (note 3) 9. Reg. v. Clarke, Evidence, 553. Reg. v. Evans, Larceny, 238.

Reg. v. Greenwood, Coining, 95.

Reg. v. Williams, Concealment of Births, 104.

Read Reg. v. Campbell for Reg. v. Compbell, page 374. Reg. v. Laugher "Rex v. Laughen, page 22. " Reg. v. Barnes, page 615. Rex v. Barnes, Rex v. Healey " Reg. v. Healey, page 488.

" Reg. v. Jepson, 463. Rex v. Jepson,

# CRIMINAL INFORMATION.

### I. WHEN GRANTED.

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#### I. WHEN GRANTED.

# 1. General Principles.

The granting of criminal information is discretionary under the circumstances. Anon. Lofft, 323. And see Rex v. Robinson, 1 W. Bl. 541.

The court will not entertain an application for a criminal information on light or trivial grounds, or where no imputations are made individually on the person applying for the information, but will leave him to his remedy by action or indictment. Reg. v. Mead, 4 Jur. 1014

On a rule for information, though

yet if under the circumstances the payment of the prosecutor's costs appears an adequate punishment, they will discharge the rule on the defendant's undertaking so to do. Rex v. Morgan, 1 Dougl. 314.

Not grantable against a very poor

person. Anon. Lofft, 155.

The court will not grant a criminal information on the sole testimony of a particeps criminis, (uncontradicted) where the offense is against the public interest, as bribery in the election of an alderman, who will, by virtue of his office, be a justice of peace. Rex v. Steward, 2 B. & Ad. 12.

To obtain a criminal information, the applicant should apply to the court in the first instance, and before he has elected to take another course of proceeding. Marshall, 4 El. & Bl. 475; 3 C. L. R. 676; 1 Jur., N. S. 676; 24 L. J., Q. B. 242.

A rule was obtained for a criminal information against a county court judge for alleged misconduct in his office. The affidavit in support of the rule stated that the applicant had adressed a memorial to the lord chancellor, setting forth the substance of the facts. peared from affidavit in answer that the memorial to the lord chancellor contained general charges of misconduct, and specified the particular misconduct complained of, and prayed for an inquiry into the behavior of the judge, and that the the court may think a ground is laid, lord chancellor had declined to in-

The court discharged the terfere. rule on the ground that the applicant had elected his remedy.

A letter between private individuals, containing abusive matter, but not inciting to a breach of the peace, will not support an application for a criminal information. Dale, Ex parte, 2 C. L. R. 870—B. C.

The court will not grant a criminal information for breach of a public statute creating a state offense on the application of a private person, but only on the information of the law officers of the crown. Crawshay, Ex parte, 8 Cox. C. C. 356; 3 L. T., N. S. 320—Q. B.

If a private person desires to punish an infraction of such a statute, he must do so by the ordinary machinery for the administration of justice, by preferring an indictment. Ib.

An information was refused until an action for the same offense was discontinued. Rex v. Fielding, 2 Burr. 654; 2 Ld. Ken. 386.

# 2. Ex-officio by the Attorney-General.

Information for a misdemeanor refused to the attorney-general, on behalf of the crown, because he may grant one himself. Rex v. Plymouth (Mayor), 4 Burr. 2090.

May be filed by the solicitor-general during a vacancy of the office of attorney-general, and such vacancy need not be averred on the record. Rex v. Wilkes, 4 Burr. 2576; S. P. Wilkes v. Rex (in error), 4 Bro. P. C. 360.

The court will not give leave to quash an information filed ex-officio by the attorney-general. He may stop the proceedings upon it by nolle prosequi, and file another. Rex v. Stratton, 1 Dougl. 239.

A defendant in an information at the suit of the attorney-general is not entitled to a change of venue without his consent. Att.- Gen. v. Smith, 2 Price, 113.

In an information at the suit of the crown, the attorney-general is entitled, as matter of right, to information for publishing in a news-

amend the information on payment of costs. Att.-Gen. v. Ray, 11 M. & W. 464; 7 Jur. 561; 12 L. J., Exch. 352.

### 3. For Libellous Publications.

### (a) What are.

An information lies for a libel reflecting on the character of a justice of the peace. Anon. Lofft, 462.

So, for sending a letter, charging the complainant with an unnatural crime, although in very guarded and general terms, and the complainant does not positively swear to his innocence. Rex v. Dennison, Lofft, 148.

So, for printing an account of a ludicrous marriage between an actress and a married man. Kinnersley, 1 W. Bl. 294.

An information held good, though the matter published merely held the prosecutor up to ridicule. v. Benfield, 2 Burr. 985.

An information lies for singing songs in the streets, reflecting on the prosecutor's children, with intent to destroy his domestic happiness. Ib.

An information lies against a member of parliament for publishing a speech in a newspaper, containing slanderous matter. Rex. v. Abingdon (Lord), 1 Esp. 226; Peake, 236—Kenyon.

A criminal information having been granted against a defendant, he, before the trial at nisi prius, distributed hand-bills in the assize town, vindicating his own conduct, and reflecting on the prosecutor's; this matter being disclosed to the judge at nisi prius by an affidavit, was held a sufficient ground to put off the trial; and that affidavit being returned to the court, they granted another information on it against the defendant, considering the affidavit taken at nisi prius as taken under the authority of the court. Rex v. Jolliffe, 4 T. R. 285.

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paper a statement of the evidence given before a coroner's jury accompanied with comments, although the statement is correct, and the party has no malicious motive in the publication. Rex v. Fleet, 1 B. & A. 379.

The court will grant a criminal information against the publisher of a newspaper for a libel reflecting on the clergy of a particular diocese, and generally upon the clergy of the church of England, though no individual prosecutor was named, and though the libellous matter was not negatived on affidavit: it is sufficient to state the publication of the libel by the defendant. Rex v. Williams, 1 D. & R. 197; 5 B. & A. 595.

An order made by a corporation and entered in their books, stating that A. (against whom a jury had found a verdict with large damages in an action for a malicious prosecution for perjury, which verdict had been confirmed) was actuated by motives of public justice, in preferring the indictment, is such a libel reflecting on the administration of justice, for which the court will grant an information against the members making that order. v. Watson, 2 T. R. 199.

So, an information will lie for publishing a reflection on a judge and jury for acquitting a prisoner. Rex v. White, 1 Camp. 359, n.— Grose.

The court refused to grant a criminal information against a bookseller, for printing a report of the House of Commons, though it reflected on the character of an individual. Rex v. Wright, 8 T. R. 293.

A party having been charged before the coroner with the crime of murder, a newspaper, pending the inquiry, published an article strongly reflecting upon him as a murder-Having been committed for trial, he was found guilty of manslaughter, and sentenced to nine months' imprisonment with hard la- retorting upon or obtaining redress

Upon an application by him for a criminal information for such article, the court declined to interfere, on the ground that there was no personal malice suggested, and that the article could now exercise no prejudicial influence. Smith, Ex parte, 21 L. T., N. S. 294-Q. B.

### For Slanderous Words spoken of Magistrates.

Slanderous words spoken of and to a mayor in discharge of his office as mayor, and of him in the execution of his office, the mayor being also a magistrate in virtue of his office, are the subject of a criminal Reg. v. Rea, 17 Ir. information. C. L. R. 584—Lefroy, C. J., and Hayes, J.

Such words are not the subject of an indictment, nor, consequently, of a criminal information—Per O'Brien and Fitzgerald, JJ.

# (b) Who entitled to.

On a motion for a criminal information for a libel impugning the conduct of a jury, it appeared that the foreman had published a letter commenting in violent terms on the alleged libel, and that, before publication, he communicated a copy to the other jurymen. The letter was signed by the foreman " for self and fellows"; and it appeared to the court that the affidavits afforded ground for believing that some of the jurymen knew of the foreman's intention to publish the letter early enough to have given him notice of their dissent from his doing so, which they had not done: Held, that neither were these jurymen, nor was the foreman, entitled to the criminal in-Reg. v. Lawson, 1 Q.B. formation. 486; 1 G. & D. 15; 5 Jur. 387.

If a party who has been libelled puts himself into communication with the libeller, for the purpose of from him, the court will not grant a criminal information. Beauclerk, ex parte, 7 Jur. 373—Q. B.

### (c) Necessary Affidavits.

It is an invariable rule not to grant an information for a libel, without an exculpatory affidavit, unless where the party libelled is abroad at a great distance, or the subject-matter of the charge is general imputation, or an accusation of criminal language held in parliament. Rex v. Haswell, 1 Dougl. 387.

It is a general rule that the court will not grant an information for a private libel, charging a particular offense, unless the prosecutor will deny the charge upon oath. Rex v.

Miles, 1 Dougl. 284.

An affidavit to found a motion for a criminal information for a libel must distinctly negative the charge, unless the party libelled is abroad, or the charge is general. Rex v. Wright, 2 Chit. 162.

· Although a party applying for a criminal information must shew himself to be an innocent party, yet the court made a rule absolute for such information against the publisher of a libel, which affected several parties, notwithstanding that the character of the person principally attacked, and on whose affidavit the rule nisi had been obtained, was impeached on shewing cause. Reg. v. Gregory, 1 P. & D. 110; 8 A. & E. 907.

A rule nisi for a criminal information for a libel was discharged, on an affidavit made by a person who swore to the truth of the libel. This person was indicted for perjury; the bill was found and he absconded. It appeared from the affidavits of several persons that the former affidavit was entirely untrue. The court, under these circumstances granted another rule nisi for a criminal information, and made it absolute. Rex v. Eve, 1 N. & P. 229; 5 A. & E. 780; 2 H. & W. 450.

(d) Proof of Publication.

The rule established at nisi prius in prosecutions for libel in a newspaper, viz., that, after production of the stamp-office affidavit, a paper corresponding with it in title, printer's and publisher's name, and place of publication, may be put in and read, as published by the parties therein named, without other proof on this point, applies equally on motions for criminal informations. Rex v. Donnison, 4 B. & Ad. 698.

A rule for a criminal information against the publisher of a newspaper libel must be drawn up on reading the newspaper, and the newspaper must be filed; otherwise the court will discharge such a rule, although properly granted on production of a certified copy from the stampoffice, under 6 & 7 Will. 4, c. 76, s. 8, of a declaration by the defendant that he is publisher of a newspaper therein described, and on production of a newspaper corresponding to it, which contains the libel. Reg. v. Woolmer, 4 P. & D. 137; 12 A. & E. 422.

If an affidavit on which a rule nisi is granted for a criminal information for a libel does not swear to a publication, the rule cannot be supported, though the affidavits of the other side admit the publication. Reg. v. Baldwin, 3 N. & P. 342; 1 W. W. & H. 158; 8 A. & E. 168; 2 Jur. 856.

A statement in an affidavit that the defendant did print and insert a libel in a certain newspaper, a copy of which is annexed, is not sufficient proof of publication to make the defendant liable to a rule nisi. *Ib*.

A motion for a criminal information for libels published in a newspaper was made upon affidavits containing the stamp-office certificate verifying the declaration of publication and printing, under 6 & 7 Will. 4, c. 76, s. 8. The affidavits also set forth the libel, stating it to be contained in a newspaper which (as appeared by the affidavits) corresponded with the description in the stamp-office declaration. At the time of the motion, a newspaper, likewise so corresponding, was shewn to the court. The rule nisi was granted; but it was not drawn up on reading the newspaper; nor was the newspaper annexed to the affidavit or filed:—Held, not sufficient at common law or under the statute; and that the newspaper could be shewn to the court on moving to make a rule absolute. Reg. v. Woolmer, 12 A. & E. 422; 4 P. & D. 137.

The court will discharge a rule for a criminal information for a libel against the publisher of a newspaper, where, in the affidavits upon which the rule had been obtained, and the affidavits sworn at the stamp-office, the defendant was described as of different places. Rex v. Francis, 4 N. & M. 251; 2 A.

& E. 49.

Where a newspaper is filed, together with affidavits, in support of a motion for a criminal information for a libel, the court will take notice of it, if it corresponds in the necessary particulars with the stampoffice affidavit, though it is not annexed to and expressly identified by

any affidavit. Ib.

A rule nisi for a criminal information having been obtained against W. for an alleged libel on E., W. filed affidavits in answer adducing fresh charges against E. Before cause was shown, C., who was defendant in an action at E.'s suit for libel, pleaded a justification, containing substantially the same matter as the fresh charges adduced by W., and also matter bringing into question the truth of the original charge. The court refused, on motion by E., to stay the hearing of argument on the rule against W. till the action of E. against C. should have been tried. Reg. v. Willmer, 15 Q. B. 50.

The mode of proving libels published in newspapers, by the production of certified copies of dear a criminal act, and a malicious inten-

clarations of proprietorship, filed under 6 & 7 Will. 4, c. 76, s. 8, is no longer available, as that section is repealed by 32 & 33 Vict. c. 24, s. 1, per First Schedule, and consequently the decisions digested under this head are no longer law.

But by 32 & 33 Viet. c. 24, Second Schedule, section 19, of 6 & 7 Will. 4, c. 76, which enacts, that, "if any person shall file any bill in "any court for the discovery of the "name of any person concerned as "printer, publisher or proprietor of any newspaper, or of any matters " relative to the printing or publish-"ing of any newspaper, in order the "more effectually to bring or carry "on any suit or action for damages "alleged to have been sustained by "reason of any slanderous or libel-"lous matter contained in any such "newspaper respecting such person, "it shall not be lawful for the de-"fendant to plead or demur to such "bill, but such defendant shall be " compellable to make the discovery "required: provided always, that "such discovery shall not be made "use of as evidence or otherwise in "any proceeding against the de-"fendant, save only in that pro-"ceeding for which the discovery is "made," is kept alive and in force.

# (e) Form and Validity of Information.

An information for a libel need not charge the offense to have been committed vi et armis, or allege that the libellous matter is false. Rex v. Burke, 7 T. R. 4.

On an information for falsely and maliciously publishing a libel concerning the king, by stating in a newspaper that his majesty was afflicted with mental derangement, the jury found the defendant guilty of so doing:—Held, on a motion for a new trial, first, that to assert falsely of his majesty, or of any individual, that he labors under the affliction of mental derangement, is a criminal act, and a malicious inten-

tion may be inferred from the mere fact of publication, unless evidence is given by the defendant to rebut such inference: secondly, that such an assertion concerning the king, being in itself mischievous to the public, is an indictable offense, without any allegation or direct proof of a malicious intention: thirdly, that where the jury desired to know "whether, in order to convict a defendant for the publication of a libel, a malicious intention must not have existed in his mind," they were correctly answered by the judge presiding at the trial, who informed them, that "a person who publishes that which is calumnious concerning the character of another must be presumed to have intended to do that which the publication is necessarily and obviously calculated to effect, unless he can show the contrary, and that the onus of proving the contrary lies upon him:" and, fourthly, that where the publisher of a libel states that the fact which he communicated is "from authority," and it appears that the fact is untrue, he is guilty of a false assertion, in the criminal sense of the word. Rex v. Harvey, 3 D. & R. 464; 2 B. & C. 257.

Information held good for publishing a libel against two persons, where the publishing was one single offense. Rex v. Benfield, 2 Burr. 983.

Where several persons were charged in the same information, it was held good, the offense arising out of

one joint act. Ib.

When an information alleged that the defendant, intending to insinuate and cause it to be believed that diverse liege subjects of the king had been inhumanly cut down, maimed and killed, by certain troops of the king, unlawfully and maliciously published a libel-of and concerning the government of this realm, and of and concerning the troops, and the only innuendo in the libel was applied to the word

"dragoons," meaning the troops of the king, and meaning thereby that divers liege subjects of the king had been inhumanly cut down and killed by the said troops of the king:—Held, on arrest of judgment, that this was sufficiently certain, without defining what particular troops were meant. Rex v. Burdett, 4 B. & A. 314.

So, where an information alleged that a libel was published of and concerning the government, and the libel did not in express terms charge the acts to have been done by the government or its order, the whole of the libel must be looked at, in order that the court may interpret it in the way in which ordinary persons would understand it, and judge from the whole tenor of it whether it is written of and concerning the government. *Ib.* 

An introductory averment in an information, that outrages had been committed in and in the neighborhood of N., is divisible: so that it need not be proved that they were committed in both places; and fourteen or fifteen miles from N. may be considered in the neighborhood. Rex

v. Sutton, 4 M. & S. 532.

Upon an information against a defendant for libel, for that he, wickedly, maliciously, and seditiously did write and publish a certain false, scandalous, and seditious libel "of and concerning his majesty's government and the employment of his troops, according to the tenor and effect following:" (setting forth the libel verbatim): the words "of and concerning" are a sufficient introduction of the matter contained in the libel, and a sufficient averment that it was written of and concerning the king's government, and the employment of his troops. Rex v. Home, Cowp. 672.

# (f) Justifying Publication. [6 & 7 Vict. c. 96, s. 6.]

troops, and the only innuendo in the libel was applied to the word mation for a libel has pleaded the

truth of the charges under 6 & 7 Vict. c. 96, s. 6, evidence is not admissible in support of the plea that the same charges had been previously published within the knowledge of the prosecutor, and that he had not taken legal proceedings against the publisher. Reg. v. Newman, Dears. C. C.85; 1 El. & Bl. 268; 3 C. & K. 252; 17 Jur. 617; 22 L. J., Q.B. 156.

Where a plea of justification contains several charges, and the prosecutor replies generally, denying the whole, the prosecutor is entitled to a verdiet unless the defendant proves to the satisfaction of the jury the truth of all the material allegations; and if the defendant fails to prove the truth of all the matters charged, it is no ground for a new trial that, with respect to some of those upon which the jury gave a verdiet against the defendant, their finding was against the weight of the evidence. Ib.

But the court, in pronouncing sentence, is to consider the evidence on the one side and on the other, and to form their own conclusion whether the guilt of the defendant is aggravated or mitigated by the plea, and by the evidence given to prove or to disprove the same. *Ib.* 

Affidavits showing the grounds upon which the defendant proceeded in pleading certain allegations in a plea of justification, in support of which no evidence was given at the trial, are receivable in mitigation of punishment, but not as proving the truth of the allegations.

If, in an information for a libel, the plea states that the prosecutor, who had been a Dominican, had earned the reputation of a seandalous friar, a witness for the defendant may be asked as to the prosecutor's moral character. Reg. v. Newman, 3 C. & K. 252—Campbell.

The special plea of justification given by 6 & 7 Vict. c. 96, s. 6, cannot be pleaded to an indictment for a seditious libel. Reg. v. Duffy, 2

Cox, C. C. 45.

### (g) Costs.

Where in an information for a libel judgment is given for the defendant, he is entitled to recover from the prosecutor the costs sustained by reason of such information, under 6 & 7 Viet. e. 96, s. 8, although the only plea is not guilty, and the judge at the trial certified under 4 & 5 Will. & M. c. 18, s. 2, that there was reasonable eause for exhibiting the information. Reg. v. Latimer, 15 Q. B. 1077; 15 Jur. 314; 20 L. J., Q. B. 129.

### 4. Against Magistrates. (a) Grounds.

When a justice of the peace acts from indirect or corrupt motives, the court will punish him by informa-Rex v. Cozens, 2 Dougl. 426. tion.

No information will be granted against justices acting in sessions, unless in very flagrant cases. v. Seaford (Justices), 1 W. Bl. 432.

Wherever magistrates act uprightly, though they mistake the law, no information will be granted against them. Rex v. Jackson, 1 T. R. 653.

On an application for a rule nisi for a criminal information against a magistrate, the question is not whether the aet done might on full investigation be found to be strictly right, but whether it proceeded from oppressive, dishonest, or corrupt motives (under which fear and favor may generally be included), or from mistake, or error; in either of the latter instances the court will not grant the rule. Reg. v. Borron, 3 B. & Ad. 432.

The court will not grant an information against a magistrate, for having improperly convicted a person, unless the party complaining makes an exculpatory affidavit, denying the facts. Rex v. Webster, 3 T. R. 388.

A criminal information was refused against a magistrate for returning to a writ of certiorari a conviction of a party in another and

more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted by the magistrate's clerk; the conviction returned being warranted by the facts. Rex v. Barker, 1 East, 186.

An information goes against a justice for committing a man for not paying 1s. for discharging his warrant. Rex v. Jones, 1 Wils. 7.

Rule nisi for an information against justices of peace making a commitment without previously taking a prosecutor's oath, who was a peer of the realm, and also for neglecting to take the noble prosecutor's recognizance to prosecute, discharged, these being deemed only irregular, not criminal. Rex v. Fielding, 2 Burr. 719.

An information will be granted against a justice of the peace, as well for granting as for refusing an ale license improperly. Rex v. Holland, 1 T. R. 692.

granted An information was against justices of peace, for refusing to grant an ale license from motives of resentment. Rex v. Hann, 3 Burr. 1716. And see Rex v. Young. 1 Burr. 556.

An information against a justice, upon a charge of refusing to grant a license, will be refused, if the reasons assigned for the refusal prove false in fact. Rex v. Athay, 2 Burr. 653.

An information was granted for refusing to grant licenses to those publicans who voted against their recommendation of candidates for members of Parliament for the borough. Rex v. Williams, 3 Burr. 13,

But where the justices had not appeared to have acted corruptly, an information was refused. v. *Baylis*, 3 Burr. 1318.

The court will not grant a criminal information for calling a magistrate a liar, accusing him of misconduct in reference to his having

of clerk to the magistrates, and threatening a repetition of the same language whenever such magistrate came into the town, unless there appears an intention to provoke a breach of the peace. Ex parte Chapman, 4 A. & E. 773.

The court will not grant a rule nisi for a criminal information against magistrates, unless it appears they have acted from an oppressive, dishonest, or corrupt motive, uuder which fear and favor are included. Fentiman, In re, 4 N. & M. 128; 1 A. & E. 127.

A criminal information was granted for these words, in a letter to a mayor: "I am sure you will not be persuaded from doing justice by any little acts of your town clerk, whose consummate malice and wickedness against me and my family will make him do anything, be it ever so vile."  $Rex \ v. \ Waite, 1 \ Wils. 22.$ 

Where a magistrate upon whose property a malicious trespass had been committed, issued a summons, requesting the offender to appear before himself, or some other magistrate, and purporting that information had been given to him (the magistrate) on oath, whereas no oath had been taken, and the information had been communicated by the magistrate to the informer, the court in discharging a rule for a criminal information against the magistrate refused to give him his costs. v. Whateley, 4 M. & R. 431.

A rule for a criminal information will not be granted against justices who wrongly or improperly reject bail, unless it manifestly appears to the court, by conclusive and satisfactory evidence, that they were also influenced by partial and corrupt motives. Reg. v. Badger, 6 Jur. 994—B. C.

Where the pecuniary sufficiency and solvency of bail are undisputed, the rejection of such bail on the ground of a coincidence of political opinion with the person or persons absented himself from an election | for whose appearance the bail offer

to become surety is improper, even though such rejection by the justices is reconcilable with the absence of

corrupt metives. ΙЪ.

Where justices reject bail on the ground that the parties entertain objectionable political opinions, and on other grounds which are concealed and not stated, the court will grant a rule nisi, calling on the magistrates refusing to show cause why a criminal information should not be filed against them.

The justices in answer to the rule deposed that they were not actuated by any corrupt or malicious motive in the rejection of the bail. court discharged the rule, but required them to pay all the costs. S. C. D. & M. 375; 4 Q. B. 468; 7 Jur.

216; 12 L. J., M. C. 66.

The court will not grant a criminal information for unwritten words imputing to a justice malversation in his office, if the words neither were spoken at the time when the justice was acting nor tended to a breach of the peace. Marlborough (Duke) Ex parte, 5 Q. B. 955; D. & M. 720; 1 New Sess. Cas. 195; 8 Jur. 664; 13 L. J., M. C. 105. See Reg. v. Rea, 7 Ir. C. L. R. 584-Q.B.

When a criminal information is applied for against magistrates, the question for the court is, not whether their acts be found upon investigation to be strictly right or not, but whether they were influenced by corrupt, oppressive, or partial motives, or acted in error, and from mistake only. In the latter case, the court will not grant the rule. Reg. v. Badger, D. & M. 375; 4 Q. B. 468; 7 Jur. 216; 12 L. J., M. C. 66.

Where an assault is committed by a magistrate on an attorney several days after he had conducted certain proceedings against such magistrate, the court will not grant a rule for a criminal information (inasmuch as the breach of the peace has not been quà magistrate), but will leave the party to the remedies by indictment

Lee, Ex parte, 7 Jur. 441 or action. —В. С.

### (b) Time of Application.

The court will grant a rule nisi for a criminal information at the end of a term against a magistrate for mal-practices during the term, but not for any misconduct before the term. Rex v. Smith, 7 T. R. 80.

A criminal information for misconduct in office may be moved for against a magistrate in the second term after the alleged misconduct, though an assize has intervened, the motion being made early enough to allow of cause being shown in the Reg. v. Saunders, 10 Q. same term.

B. 484.

Where facts tending to criminate a magistrate took place twelve months before the application to the court, they refused to grant a criminal information, although the prosecutor, in order to excuse the delay, stated that the facts had not come to his knowledge till a very short time before the application was made. Rex v. Bishop, 5 B. & A. 612.

A criminal information may be moved for against magistrates, for misconduct in the execution of their offices, in the second term after the offense committed, there being no intervening assizes. Rex v. Harries,

13 East, 270.

The court will not grant a rule criminal information nisi for a against a magistrate, so late in the second term after the imputed offense as to preclude him from the opportunity of showing cause against it in the same term. Rex v. Marshall, 13 East, 322.

If a complaint for an information against a justice of the peace proves frivolous, the attorney as well as the original complainer must pay the costs. Rex v. Fielding, 2 Burr. 654;

2 Ld. Ken. 386.

### (c) Notice of Application. A magistrate is entitled to notice

before an application is made for a criminal information, where he is charged with miseonduct in his magisterial capacity, although other misconduct is also charged. Rex v. Heming, 2 N. & M. 477; 5 B. & Ad. 666.

A magistrate is entitled in all eases to six days' notice, of an intention to apply for a rule nisi for a criminal information; and it is not sufficient that, in point of fact, six days have expired between the notice and the motion, if the notice contemplates an earlier application. Ib.

5. Sending a Challenge.

The court will not grant a criminal information for sending a challenge, if, in the course of the transactions out of which it arose, the prosecutor has himself sent a challenge to a third person connected with the party against whom he moves. Rex v. Larrieu, 7 A. & E. 277.

And this, although the prosecutor's challenge was sent into a foreign country, and did not show any intention to break the peace here. Ib.

An affidavit by A., stating that B. had brought him a challenge from C., and that B. had refused to make an affidavit that C. sent him with it, is not evidence in which the court will grant a rule nisi for a criminal information against C. for sending the ehallenge. Rex v. Willett, 6 T. R. 294.

Rule to show cause for an information for challenge granted, upon producing only copies of the letters containing it. Rex v. Chappel, 1 Burr. 402.

An information was refused where the charge of giving a challenge was made under false and ambiguous colors; the words spoken admitting of a favorable interpretation. Prideaux v. Arthur, Lofft, 393.

Where a person who was challenged to fight a duel applied for a criminal information, and in his affidavit, in support of the applica- the handwriting.

tion, stated, "that the defendant had been dismissed from her Majesty's service, under circumstances which would, in the opinion of officers and gentlemen, disentitle him to make any appeal to the laws of honor, in a case where no offense was given":—Held, that by casting these imputations on the defendant, the applicant had forfeited his right to obtain the interference of the court by a criminal information. Reg. v. Doherty, 1 Arn. & H. 16.

Upon a motion for a criminal information against A. for challenging B., an affidavit stating that in a correspondence between them A. had intimated an intention, after the settlement of accounts between himself and B., to require an apology for offensive expressions contained in a letter received by him from B., or "such satisfaction as is usual on such oceasions between gentlemen;" and that afterwards, C., a relation of A., came with a letter of B. in his hand,—settled the account by paying a balance due from A. to B., and, after saying that he had come in consequence of the letter in his hand, delivered a hostile message as from A.:—is insufficient to connect A. with the challenge; and therefore the court refused the rule. Rex v. Younghusband, 4 N. & M. 850,

The affidavits in support of an application for a criminal information against a party for writing letters provoking a breach of the peace, stated the belief of the deponents, that the letters were in the handwriting of the party, not from their own knowledge of his handwriting, but from the information of other persons; the court refused a rule to show cause, on the ground that such evidence would not warrant a grand jury in finding a true bill. Williams, Ex parte, 5 Jur. 1133—Q. B.

The court also refused leave to renew the application upon affidavits supplying sufficient evidence of

### 6. Against Parish Officers.

If a parish officer makes an alteration in a poor-rate, after it has been allowed by two justices, but without the approbation of the justices, he cannot be punished by information. Rex v. Barratt, 2 Dougl. 465.

An information lies for a conspiracy by parish officers and others to marry persons settled in different parishes, if the delinquents are of good situation in life, but not if they are low and indigent. Rex v. Compton, Cald. 246.

Granted against overseers for procuring a marriage to change a settlement. Rex v. Herbert, 2 Ld. Ken. 466.

Granted against overseers for procuring a pauper to marry another pauper with child of a bastard. Rex v. Tarrant, 4 Burr. 2106.

Granted against overseers for procuring a soldier to marry a poor woman who was an idiot, and chargeable to the parish. Rex v. Watson, 1 Wils, 41.

The court refused a rule to show cause why a criminal information should not be granted against overseers, for endeavoring to induce paupers fraudulently to remove to another parish, the remedy being by indictment. Reg. v. Storwood (Overseers), 9 Jur. 448; S. C. nom. Reg. v. Jennings, 2 D. & L. 741; 1 New Sess. Cas. 488; 14 L. J., Q. B. 488—B. C.

By 4 & 5 Will. 4, c. 76, s. 97, if any overseer shall purloin, embezzle, or wilfully waste or misapply any of the moneys belonging to any parish, every such offender shall upon conviction before any two justices, forfeit for every such offense any sum not exceeding 20 l.; an information against a parish officer under this statute for misapplying, without the word "wilfully," is bad. Carpenter v. Mason, 4 P. & D. 439; 12 A. & E. 629.

### 7. In other Cases.

The court will not grant a crim- C. 84.

inal information against the members of a corporation for a misapplication of the corporation money. Rex v. Watson, 2 T. R. 199.

A summons was issued against a judgment debtor, under 9 & 10 Vict. e. 95, s. 98, calling upon him to appear, and to be examined by the judge of the court touching his estate and effects, and the manner and circumstances under which he contracted the debt which was the subject of the action in which the judgment was obtained, and as to the means and expectation he then had, and as to the property and means he still had, of discharging the debt, and as to the disposal he might have made of any property. The debtor. appeared, and was duly sworn. The judge asked him whether he was prepared to pay; he answered in the negative; and was entering into an explanation of the circumstances, when he was stopped by the judge, who ordered his immediate committal to prison:—Held, that these circumstances afforded no ground for criminal information, there being no imputation of a corrupt motive on the part of the judge. Anon, 16 Jur. 995—B. C.

The court granted an information against the inhabitants of a parish for non-repair of a road, where it was deposed that a bill of indictment had been preferred at the assizes, but thrown out by the grand jury; that two of the grand jurors were proprietors of land in the parish; that one of them who had acted on behalf of the parish at an earlier stage of the dispute had stated to the foreman that the road was useless, and that both had taken an active part in opposing the finding of the indictment, such deposition being contradicted only by general statements that the two had taken no undue or active part in opposing the finding. Reg. v. Upton St. Leonards, 10 Q. B. 827; 2 New Sess. Cas. 582; 11 Jur. 306; 16 L. J., M.

Words spoken of a person, although they may contain serious imputations, are not sufficient ground for a criminal information, unless they are of such a nature as are likely to provoke a breach of the peace. Marlborough (Duke) Ex parte, 5 Q. B. 955; D. & M. 720; 1 New Sess. Cas. 195; 8 Jur. 664; 13 L. J., M. C. 105.

Upon a motion for a criminal information, it appeared that the applicant was an attorney, and an officer of the court, and the person against whom the application was made was a magistrate, and that the latter had assaulted the former in revenge, it was suggested, for his having conducted some proceedings against him on behalf a client, before justices, for a previous assault; the court refused to interpose its extraordinary protection to the applicant, but left him to his remedy by indictment or action. Reg. v. Arrowsmith, 2 D., N. S. 704—B. C.

An information lies for a false return to a mandamus. Anon., Lofft, 285.

But refused against a man who refused to serve the office of one of the sheriffs of London. Rex v. Grosvenor, 1 Wils. 18; 2 Str. 1193.

The court granted an information against a person refusing to take on himself the office of sheriff, because the vacancy of the office occasioned the stop of public justice, and the year would be nearly expired before an indictment could be brought to trial. Rex v. Woodrow, 2 T. R. 7319.

So, for endeavoring to procure the appointment of certain persons to be overseers of the poor with a view to derive a private advantage to the party. Rex v. Joliffe, 1 East, 154, n.

The surveyor of a high road having improperly expended a large sum of money, borrowed by the trustees under an act of parliament, without the consent of the trustees, which the act required, to sanction the expenditure, the court refused | erwood, 2 Ld. Ken. 202.

a criminal information, no corrupt motive being expressly alleged; and they will not convert a civil into a criminal inquiry. Rex v. Friar, 1 Chit. 702.

An information was granted against commissioners for exceeding their Rex v. Rogers, 1 Ld. Ken. 373.

But refused against twelve commissioners for pulling down a turnpike, on a suggestion of irregularity in the time and manner of the meeting. *Anon*, Lofft, 199.

So, against a husband for endeavoring to retake his wife contrary to articles. Rex v. Lane (Lord), 1 W.

Bl. 18.

So, for embezzling money collected on a church brief. Rex v. St. Botolph, Bishopsgate, 1 W. Bl. 443.

So, for burying a dead body found in a river, without sending for the coroner. Rex v. Proby, 1 Ld. Ken. 250.

But granted for maliciously press-Rex v. Webb, 1 W. Bl. 19.

An information for a nuisance will be refused, if an application to the party is not shown. Rex v.Green, 1 Ld. Ken. 379.

An information does not lie for a riot, if the parties did not disperse, and are within the penalty of the riot act: otherwise it does. Lofft, 253.

Nor for pretending to read the riot act. Rex v. Spriggins, 1 W. Bl. 2.

All persons by their presence countenancing a riot are liable to an information. Rex v. Hunt, 1 Ld. Ken. 108.

An information was granted for attempting to bribe a privy councillor to procure a reversionary patent of an office grantable by the king under the great seal. Rex v. Vaughan, 4 Burr. 2494.

An information was granted on the deposition of two persons, for the offering of a bribe by the defendant at an election. Rex v. Ish-

8. Application for Information.

The party applying for an information must come with clean hands into court. Rex v. Eden, Lofft, 72.

Therefore an information will be refused to cheats and gamblers against others of the same description. Rex v. Peach, 1 Burr. 548.

So, an information for a challenge was denied to the first sender of it. Rex v. Hankey, 1 Burr. 316.

In order to maintain an application for a criminal information, the applicant must leave himself wholly in the hands of the court, and in no way whatever make libellous attacks on the other side. Rex v. Nottingham Journal (Proprietors), 9 D. P. C. 1042—Q. B.

Although a party applying for a criminal information must show himself to be an innocent party, yet the court made a rule absolute for such information against the publisher of a libel, which affected several parties, notwithstanding that the character of the person principally attacked, and on whose affiadvit the rule nisi had been obtained was impeached on showing cause. Reg. v. Gregory, 1 P. & D. 110; 8 A. & E. 907.

Where a party assaulted gave his assailant into the custody of a policeman, and gave him in charge at the police station, whereupon he was locked up till he gave bail for his appearance to answer the charge on the following day, but no further proceedings were taken, the court made a rule absolute for a criminal information for the assault. Reg. v. Gwilt, 3 P. & D. 176; 8 D. P. C. 476; 11 A. & E. 587; 4 Jur. 316.

But the court refused a rule for a criminal information for an assault, upon its appearing that the applicant had taken out a warrant against the other party; though the applicant offered that it should be part of the rule, that it should abandon the proceedings on the warrant. Anon., 4 A. & E. 576, n.

9. Time.

The motion for a criminal information must be made by the law officers of the crown, or by a barrister, and not by a private individual. Rex v. Lancashire (Justices), 1 Chit. 602.

Where a party had been aware of the facts on which the application for a criminal information against a magistrate would be founded early in Easter Term, and did not make the application till the last day but three of Trinity Term, the court refused a rule nisi. Reg. v. Harris, 8 Jur. 516; 13 L. J., M. C. 162.—Q. B.

The court will not grant a rule for criminal information in a case where a whole term has been allowed to intervene between the facts alleged and the application to the jurisdiction of the court. Reg. v. Hext, 4 Jur. 339—B. C.

The court will not grant a rule nisi for a criminal information on the last day of term. Exparte Tanner, 3 Jur. 10—B. C.

Leave to file a criminal information for a libel should be applied for in a reasonable time, before the expiration of the second term after the publication of it, if it come to the knowledge of the prosecutor early enough to enable bim to move within that period. Rex v. Jollie, 1 N. & M. 483; 4 B. & Ad. 867.

# 10. Affidavits.

Contents.]—An affidavit to found a motion for a criminal information must distinctly negative the charge; and it is usual to do so in the words of the charge. Rex v. Wright, 2 Chit. 162.

If circumstances of suspicion only are stated in affidavits in support of a rule for a criminal information:—Held, to be insufficient, unless the deponents add their belief that the party against whom it is moved acted from corrupt motives. Rex v. Williamson, 3 B. & A. 582.

An information on Hen. 5, c. 4,

against a person for practising as an attorney whilst he was under-sheriff, was refused, because the affidavit did not mention what particular acts he did as an attorney, of which the court should judge. Rex v. Bull, 1 Wils. 93.

If, in the affidavit to found a criminal information, slanderous words on the defendant be introduced, it will be a sufficient ground to refuse the application. Rex v. Byrne, 2 N. & P. 152; 6 D. P. C. 36; 7 A. & E. 190.

Where a magistrate, in answer to a rule for a criminal information, stated that the applicant was "a shuffling and litigious fellow;" the court censured such language, although they would not reject the affidavit. Rex v. Burn, 7 A. & E. 190; 1 Jur. 659.

Intitling.]—Affidavits on motions for leave to file criminal informations must not be intitled; and if they are, they cannot be read. Rex v. Robinson, 6 T. R. 642.

Nor need the affidavits produced on shewing cause against a rule. Rex v. Harrison, 6 T. R. 60.

But all affidavits made after the rule is made absolute, must be intitled. Rex v. Robinson, 6 T. R. 642.

Affidavit intitled in the King's Bench, upon which the attorney-general had filed an information exofficio against the defendant, permitted to be read in aggravation after judgment by default. Rex v. Morgan, 11 East, 457.

Before whom Sworn.]—Affidavits upon which an information is applied for, must not be sworn before the attorney in the prosecution. Rex v. Ipswich (Jailor), 2 Ld. Ken. 421.

Semble, that an affidavit to found a criminal information for a libel published in England, in parts beyond seas, may be sworn abroad. Rex v. Satirist (Editor), 3 N. & M. 532.

An affidavit, to put off a trial at nisi prius, being returned to the court, they granted another information on it against the defendant, considering the affidavit taken at nisi prius as taken under the authority of the court. Rex v. Jolliffe, 4 T. R. 285.

Jurat.]—An affidavit purported in the body to have been sworn before a magistrate residing at A., in the county of York, and the jurat was "sworn before me (the magistrate) at A.," omitting the county, the court stated that they were not prepared to say that the jurat was wrong. Rex v. Burn, 7 A. & E. 190; 2 N. & P. 152; 6 D. P. C. 36; 1 Jur. 659.

The county in which a deponent is sworn to an affidavit to grant a rule for a criminal information, made before a commissioner, must appear in the jurat. Rex v. Younghusband, 4 N. & M. 850.

In Mitigation or Aggravation.]—Where a defendant was convicted of a libel, which purported to have been written in consequence of his having seen a statement of facts in different newspapers, an affidavit that he read those statements in such newspapers may be received in mitigation of punishment; but an affidavit that the facts contained in those statements were true, is not admissible. Rex v. Burdett, 4 B. & A. 314.

When any defendant shall be brought up for sentence on any indictment, or information, after verdict, the affidavits produced on the part of the defendant, if any such be produced, shall be first read, and then any affidavits produced on the part of the prosecution shall be read; after which the counsel for the defendant shall be heard, and, lastly, the counsel for the prosecution. Reg. Gen., K. B., M. T. 29 Geo. 3. Rex v. Bunts, 2 T. R. 683.

When a defendant, who has suf-

fered judgment by default in a criminal prosecution, is brought up for judgment, each party should come prepared with affidavits disclosing his own case (if he means to produce any affidavit at all): but, if in the course of the inquiry the court wishes to have any point further explained, they will give the defendant an opportunity of answering it on a future day. Rex v. Wilson, 4 T. R. 487.

Affidavits allowed to be read on a defendant's being brought up for judgment, stating that the defendant had made use of expressions aggravating his guilt, in the presence of two persons who related them to the persons making the affidavits, and the prosecutor swearing that the persons who heard the expressions refused to come forward, and were supposed to be under the influence of the defendant. Rex v. Archer, 2 T. R. 203, n.

Where the party applied for time to send to Trinidad for an affidavit of the truth of certain matters in a libel, in order to show cause against such a rule, the court would not grant further time. Affidavits abroad, before judges there, and verified, although receivable as affidavits of debt, are not to be received on rules to show cause, in opposition to affidavits made in K. B. Rex v. Draper, 3 Smith, 391.

When a defendant who has been convicted on an indictment comes up to receive judgment, the prosecutor may read affidavits in aggravation, though made by witnesses who were examined at the trial, and which affidavits he is at liberty to answer. Rex v. Sharpness, 1 T. R. 228.

When a defendant is brought up to receive judgment after conviction, an affidavit by the prosecutor in aggravation, stating that a third person, who refuses to join in the affidavit, had informed him that the defendant after the trial had repeated in his hearing the libellous

not admissible; at least, not without swearing that such third person was under the control or influence of the defendant. Rex v. Pinkerton, 2 East, 357. And see Rex v. Withers, 3 T. R. 428, and Rex v. Mawbey, 6 T. R. 627.

#### 11. Other Points of Practice.

Where a rule nisi for a criminal information, though served before, reached the hands of the defendant only the day before it was to be argued: Held, that it must be enlarged. Reg. v. Hely, 10 Jur. 1009 **—**Б. С.

A party applying for an information must waive his right of action; but if the court, on hearing the whole matter, is of opinion that it is a proper subject for an action, they may give the party leave to bring it. Rex v. Sparrow, 2 T. R. 198.

When a rule nisi, obtained for a criminal information for a libel in the Queen's Bench, is discharged on showing cause, the applicant may bring an action in another court for publication of the same libel. ley v. Cooke, 16 M. & W. 822; 4 D. & L. 702; 11 Jur. 377; 16 L. J.,

A rule nisi for a criminal information will not be granted where a former rule for the same matter against the same defendant has been discharged, although the second motion is made upon additional affidavits. Rex v. Smithson, 1 N. & M. 775; 4 B. & Ad. 861.

Where a rule for a criminal information was enlarged, on condition that the defendant would appear and plead immediately, in the event of its being made absolute: Held, that he was entitled to reasonable time. Reg. v. Muntz, 2 Jur. 538—Q. B.

Before the defendant could instruct his London solicitors to plead to the information, the prosecutor had obtained a rule calling upon matter for which he was indicted, is him to show cause why the prosecutor should not be at liberty to enter an appearance and sign judgment. The court made the rule absolute, but awarded costs against the prosecutor. *Ib*.

A joint information against several cannot issue upon distinct rules for one or more information or informations against each. Rex v.

Heydon, 3 Burr. 1270.

The court will not enlarge a rule for a criminal information, in order that the affidavit on which the rule was obtained may be re-sworn. Rex v. Cockshaw, 2 N. & M. 378.

The rule that when a party has failed in an application to the court in consequence of not being properly prepared, he shall not be allowed to renew it with new or amended materials, applies to public officers in the discharge of their duties, as well as to private individuals. Reg. v. Pickles, 6 Jur. 1039—Q. B.

In a criminal information for the non-repair of a highway, the court has no power, either by common law, or under 1 Will. 4, c. 22, s. 4, upon application by the prosecutor, to order the examination of a witness upon interrogatories. Reg. v. Upton St. Leonard's, 10 Q. B. 827; 12 Jur. 11; 17 L. J., M. C. 13.

The court will not permit a second application to be made for a standing out on ball criminal information, unless leave dington, 1 East, 143.

was reserved for the purpose on the first application from very special circumstances, such as being met by affidavits which afterwards turned out to be based on perjury. Munster, Ex parte, 20 L. T., N. S. 612—Q. B.

#### 12. Costs.

Under 4 & 5 Will. & M. c. 18, s. 2, a defendant in a criminal information which is not tried, or in which a verdict is given for the defendant, is entitled only to such an amount of costs as equals the amount of the prosecutor's recognizance. Reg. v. Savile, 18 Q. B. 703.

Semble, that the proper mode of obtaining such costs is for the defendant to take out a side bar rule for taxing the whole costs; and, upon that being done, he is entitled to so much of them as equals the amount of the recognizance. *Ib*.

#### 13. Conviction.

After conviction on a criminal information, to which objections were taken, the defendant must stand committed, pending the consideration of the judgment, unless the prosecutor expressly consents to his standing out on bail. Reg v. Waddington, 1 East, 143.

# CRIMINAL LAW.

- I. Persons capable of committing Crimes and Misdemeanors.

  - Agents, 17.
     Insane Persons, 17.
  - 3. Deaf and Dumb, 21.
  - 4. Presumed Coercion of Wife, 22.
  - 5. Drunkards, 23.
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  - Corporations, 23.
     Infants, 24.
     Peers, 24.
     Persons under Compulsion, 24.

### 1. Agents.

If a man does, by means of an innocent agent, an act which amounts to a felony, the employer, and not the agent is accountable for the act. Reg. v. Bleasdale, 2 C. & K. 765-Erle.

If A., by letter, desires B., an innocent agent, to write the name of S. to a receipt on a post office order, and the innocent agent does it, believing that he is authorized so to do, A. is a principal in this forgery, and it makes no difference, that, by the letter, A. says to B. that he is at liberty to sign the name of S., and does not in express words direct him to do so. Reg. v. Clifford, 2 C. & K. 202—Platt.

The owner of works carried on for his benefit by his agents and servants, is liable to an indictment for a nuisance, resulting from the mode of carrying on the business, although such nuisance was committed in opposition to his orders, and without his knowledge, the proceedings by indictment in

such case being criminal in form only. Reg. v. Stephens, 1 L. R. Q. B. 702; 12 Jur., N. S. 961; 14 W. R. 859; 35 L. J., Q. B. 251; 14 L. T. N. S. 593.

#### 2. Insane Persons.

39 & 40 Geo. 3, c. 94; 56 Geo. 3, c. 117; 1 & 2 Vict. c. 14, extended by 3 & 4 Vict. c. 54, and amended by 27 & 28 Vict. c. 29.

Defense of Insanity.]-To justify the acquittal of a prisoner indicted for murder, on the ground of insanity, the jury must be satisfied that he was incapable of judging between right and wrong; and that, at the time of committing the act, he did not consider that it was an offence against the laws of God and Rex v. Offord, 5 C. & P. nature. 168-Lyndhurst.

If, to an indictment for treason for attempting the life of the Sovereign, by shooting at her Majesty, the defence is insanity, the question for the jury will be, whether the prisoner was labouring under that species of insanity which satisfies them that he was quite unaware of the nature, character, and consequences of the act he was committing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime. Reg. v. Oxford, 9 C. & P. 525-Denman, Alderson, and Patteson.

Semble, that, notwithstanding a

party accused did an act which was in itself criminal, under the influence of an insane delusion, with a view of repressing or avenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable if he knew at the time that he was acting contrary to law. Macnaghten's case, 10 C. & F. 200; 8 Scott, N. R. 595; 1 C. & K. 130.

If the accused was conscious that the act was one which he ought not to do, and if the act was at the same time contrary to law, he is In all cases of this punishable. kind the jurors ought to be told, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that what he was doing was wrong.

A party labouring under a partial delusion must be considered in the same situation, as to responsibility, as if the facts, in respect to which the delusion exists, were real. *Ib*.

Where an accused person is supposed to be insane, a medical man who has been present in court and heard the evidence may be asked, as a matter of science, whether the facts stated by the witnesses, supposing them to be true, show a state of mind incapable of distinguishing between right and wrong. Ib.; S. P. Rew v. Wright, R. & R. C. C. 456; Rex v. Searle, 1 M. & Rob. 75.

To entitle a prisoner to be acquitted on the ground of insanity he must, at the time of the committing of the offence, have been so insane that he did not know right from wrong. Reg. v Higginson, 1 C. & K. 129—Maule.

When the defence of insanity is set up in order to warrant the jury in acquitting the prisoner, it must be proved affirmatively that he is insane; if the fact be left in doubt, and if the crime charged in the indictment is proved, it is their duty to convict. Reg. v. Stokes, 3 C. & K. 185—Rolfe.

On a trial for murder, evidence was called, on the prisoner's behalf, to prove his insanity. A physician who had been in court during the whole trial was then called on the part of the prosecution, and asked whether, having heard the whole evidence, he was of opinion that the prisoner, at the time he committed the alleged act, was of unsound mind? Held, notwithstanding the opinion of the judges in Reg. v. Macnaghten (supra), that such a question ought not to be put, but that the proper mode of examination was to take particular facts, and assuming them to be true, to ask the witness whether, in his judgment, they were indicative of insanity on the part of the prisoner at the time the alleged act was committed. Reg. v Frances, 4 Cox, C. C. 57—Alderson.

Where a prisoner sets up insanity as a ground of defence, one cardinal rule is, that the burden of proving his innocence on that ground rests The question on the party accused. in such a case for the jury is not whether the prisoner was of sound mind, but whether he has made out to their satisfaction that he was notof sound mind. The jury may come to a conclusion on this point from the conduct and acts of the accused shortly before and down to the commission of the alleged crime. Although insanity on one point, for instance—a delusion as to property—will not exempt a party from responsibility, the fact is not immaterial in considering his responsibility at another time and on another The want of motive for subject. the commission of the crime, and

its being committed under circumstances which render detection inevitable, are important points for the consideration of the jury, when coupled with evidence of insanity on any particular point. Reg. v. Layton, 4 Cox, C. C. 149—Rolfe.

To ask a witness whether, in his opinion, the prisoner is capable of judging between right and wrong, is an improper question, for that is what no witness thought of, or is

prepared to answer.

A married woman, having killed her husband immediately after an apparent recovery from a disease (the result of ehildbirth) which eaused a great loss of blood, and exhausted the vessels of the brain, and thus so weakened its power and so tended to produce insane delusions of the senses, which, while suffering under such disease, she complained of, and which, by her own account, had been renewed at the time of the act of homicide (although they were not such as would lead to it):—Held, evidence from which a jury might properly find that she was not in such a state of mind at the time of the act as to know its nature or be accountable for it. Reg. v. Law, 2 F. & F, 836 —Erle.

Where a married woman, fondly attached to her children, and apparently most happy in her family, had poisoned two of them with some evidence of deliberation and design; but it appeared that there was insanity in her family; and, from her demeanor before and after the act, which, although not wholly irrational, yet was strangely erratic and excited; and from recent antecedents, and the presence of certain exciting eauses of insanity, and her own account of her sensations, the medical men were of opinion that she was labouring under actual cerebral disease, and that she was in a paroxysm of insanity at the time of the act; this was left to the jury as evidence on which they might rightly

find her not guilty on the ground of insanity. Reg. v. Vyse, 3 F. & F.

247—Wightman.

The delusions which indicate a defect of sanity such as will relieve a person from criminal responsibility, are delusions of the senses, or such as relate to facts or objectsnot mere wrong notions or impressions, or of a moral nature; and the aberration must be mental, not moral, to affect the intellect of the individual. It is not enough that they show a diseased or a deprayed state of mind, or an aberration of the moral feelings, the sense of right and wrong being still, although it may be perverted, yet not destroyed; and the theory of a moral insanity, or insanity of the moral feelings, while the sense of right and wrong remains, is not to be reconciled with the legal doctrine on the sub-Reg. v. Burton, 3 F. & F. 772 ject. -Wightman.

Where, upon a trial for murder, the plea of insanity is set up, the question for the jury is, Did the prisoner do the act under a delusion, believing it to be other than it If he knew what he was doing, and that it was likely to eause death, and was contrary to the law of God and man, and that the law directed that persons who did such aets should be punished, he is guilty of murder. Reg. v. Townley, 3 F.

& F. 839 — Martin.

The circumstances of a person having acted under an irresistible influence to the commission of homicide is no defence, if at the time he committed the act he knew he was doing what was wrong. Reg. v.Haynes, 1 F. & F. 666-Bramwell.

On a trial for murder, the defence of insanity by the evidence showing a great amount of senseless extravagance and absurd eccentricity of eonduct, coupled with habits of exeessive intemperance, causing fits of delirium tremens, the prisoner, however, not having been labouring under the effects of such a fi tat the

time of the act, and the circumstances showing sense and deliberation, and a perfect understanding of the nature of the act:—Held, that the evidence was not sufficient to support the defence, as it rather tended to show wilful excesses and extreme folly than mental incapacity. Reg. v. Leigh, 4 F. & F. 915 —Erle.

A mere uncontrollable impulse of the mind, co-existing with the full possession of the reasoning powers, will not warrant an acquittal on the ground of insanity; the question for the jury being, whether the prisoner, at the time he committed the act, knew the character and nature of the act, and that it was a wrongful Reg. v. Barton, 3 Cox, C. C. 275—Parke.

Where a person is in a state of mind in which she is liable to fits of madness, it is for the jury to consider whether the act done was during such a fit, though there is nothing before or after the act to indicate it, and though there is some evidence of design and malice. A medical witness should give his opinion as to the state of mind, not as to the responsibility of the prisoner; the latter is for the jury under the direction of the judge. Reg. v. Richards, 1 F. & F. 87—Crowder.

On an indictment for maliciously setting fire to a building, it is not necessary to prove actual ill-will in the prisoner towards the owner; and in order to justify a jury in acquitting a prisoner on the ground of insanity, they must believe that he did not know right from wrong; but if they find that the prisoner, when he did the act, was in such a state of mind that he was not conscious that the effect of it would be to injure any other person:—Held, that this will amount to a general verdict of not guilty. Reg. v. Davies, 1 F. & F. 69-Crompton.

Arraignment. - Where a bill had been found against an insane pris-

removed by order of the Secretary of State to the County lunatic asylum, and the governor of the asylum had made an affidavit that he was in a hopeless state of insanity, the court will nevertheless require that he be brought up, and his alleged insanity inquired into by a jury, unless it is shown that it would be dangerous to bring him into court, and in that case the court will allow the witnesses their costs, and bind them over to appear when called Reg. v. Dwerryhouse, 2 Cox, C. C. 446—Patteson.

A party having been indicted for a misdemeanor, of uttering seditious words, and upon his arraignment refusing to plead, and showing symptoms of insanity; and an inquest being forthwith taken under 39 & 40 Geo. 3, c. 94, s. 2, to try whether he was insane or not:—Held, first, that the jury might form their own judgment of the present state of the prisoner's mind from his demeanor while the inquest was being taken; and might thereupon find him to be insane, without any evidence being given as to his present state. v. Goode, 7 A. & E. 536.

Held, secondly, that, upon his showing strong symptoms of insanity in court during the taking of the inquest, it became unnecessary to ask him whether he would crossexamine the witnesses, or would offer any remark on the evidence. Ib.

A grand jury has no authority by law to ignore a bill for murder on the ground of insanity; it is their duty to find the bill; otherwise the court cannot order the detention of the party during the pleasure of the crown, either on arraignment or trial, under 39 & 40 Geo. 3, c. 94, ss. 1 & 2. Reg. v. Hodges, 8 C. & P. 195—Alderson.

The prisoner was indicted for shooting at his wife with intent to murder her, and was defended by counsel, who set up for him the deoner for murder, and he had been | fence of insanity. The prisoner. however, objected to such a defence, asserting that he was not insane; and he was allowed by the judge to suggest questions to be put by his lordship to the witnesses for the prosecution, to negative the supposition that he was insane; and the judge also, at the request of the prisoner, allowed additional witneses to be called on his behalf for the same purpose. They, however, failed in shewing that the defence was an incorrect one; and, on the contrary, their evidence tended to establish it more clearly, and the prisoner was acquitted on the ground of insanity. Reg. v. Pearce, 9 C. & P. 667—Bosanquet.

Where a jury is impanneled to try whether a prisoner is insane or not at the time when he is brought up to plead to an indictment, the counsel for the prosecution is to begin and call his witnesses to prove the sanity of the prisoner. Reg. v.Davies, 6 Cox, C. C. 326; 3 C. & K. 328—Williams.

But where a jury is impanneled, at the instance of the counsel for a prisoner, to try whether he is insane or not at the time when brought up to plead to an indictment, the proof of the insanity is incumbent on his counsel. Reg. v. Turton, 6 Cox, C. C. 385—Cresswell.

Commitment. —A commitment of an insane person, under 39 & 40 Geo. 3, c. 94, s. 3, is not a commitment in execution, and is not to be construed with the same strictness. Rex v. Gourlay, 7 B. & C. 669; 1 M. & R. 619. But see 1 & 2 Vict. c. 14.

Property. ]—Under 3 & 4 Vict. c. 54, s. 2, which for the repayment to parishes or counties of expenses incurred in the maintenance of criminal lunatics, enables justices to order the overseers of any parish where money, goods or chattels of the lunatic shall be, to seize the money or seize and sell the goods and chattels, justices cannot authorise the the evidence was not interpreted to Digitized by Microsoft®

overseers to levy a debt claimed to be due to the lunatic by ordering them to seize a sum of money in the possession of the alleged debtor. And on motion for a mandamus at the instance of such overseers, calling upon the alleged debtors to pay them such money, the prosecutors adducing evidence to shew that such debt was due, and that the sum demanded was in the possession of the alleged debtor, the court, on cause shewn, refused a mandamus. v. *Longhorn*, 17 Q. B. 77.

### 3. Deaf and Dumb.

A person, deaf and dumb, was to be tried for a capital felony: the judge ordered a jury to be impanneled, to try whether he was mute by the visitation of God; the jury found that he was so. The jury was then sworn to try whether he was able to plead, which they found in the affirmative; and the prisoner by a sign pleaded not guilty. The judge then ordered the jury to be sworn to try whether the prisoner was now sane or not; and on the question, he directed the jury to consider whether the prisoner had sufficient intellect to comprehend the course of the proceedings, so as to make a proper defence, to challenge any juror he might wish to object to, and to comprehend the details of the evidence; and that if they thought he had not, they should find him not of sane The jury did so, and the mind. judge ordered the prisoner to be detained under 39 & 40 Geo. 3, c. 94, s. 2. Rex v. Pritchard, 7 C. & P. 303—Alderson.

A person deaf and dumb was to be tried for a misdemeanor. A jury was impanneled to try whether he was mute by the visitation of God, and on their finding that he was so, they were sworn to try if he was of sound mind, and on their finding that he was so, his counsel pleaded not guilty for him, and the trial proceeded in the usual manner, and

Reg. v. Whitfield, 3 the prisoner. C. & K. 121—Williams.

### 4. Presumed Coercion of Wife.

A wife cannot commit larceny in the company of her husband; for it is deemed his coercion, and not her voluntary act; yet, if she does it in his absence, and by his mere command, she is then punishable as if she was sole, and the husband, it is said, may be accessory to the wife. Anon., 2 East, P. C. 559.

The law, out of tenderness to the wife, if a felony is committed in the presence of the husband, raises a† presumption prima facie and prima facie only, that it was done under his coercion. Rex v. Hughes, 2 Le-

win, C. C. 229—Thompson.

A wife went from house to house uttering base coin. Her husband accompanied her, but remained outside:—Held, that the wife acted under the husband's coercion. Conolly's case, 2 Lewin, C. C. 229-

Bayley.

A wife, by her husband's order and procuration, but in his absence, knowingly uttered a forged order and certificate for the payment of prize-money:—Held, that the presumption of coercion at the time of uttering did not arise, as the husband was absent; and that the wife might be convicted of the uttering, and the husband of procuring. Rex v. Morris, R. & R. C. C. 270.

On an indictment against a married woman for falsely swearing herself to be next of kin, and procuring administration:—Held, that she might be guilty, although her husband was with her when she took the oath. Rex v. Dicks, 1

Russ. C. & M. 16.

In the case of Rex v. Archer, 1 M. C. C. 143, husband and wife were jointly indicted for receiving stolen goods, and both convicted:— Held, that as the charge against the husband and wife was joint, and it had not been left to the jury to say whether she received the goods in v. Manning, 2 C. & K. 903.

the absence of the husband, the conviction of the wife was wrong, though she had been more active

than her husband.

If larceny is committed jointly by husband and wife, the latter is entitled to be acquitted, as she must be presumed to be under his coercion and control: and where she was indicted as "the wife of A.," it is sufficient proof that she was so, without adducing further evidence Rex v. Knight, to prove that fact. 1 C. & P. 116—Park.

Husband and wife were jointly indicted for a misdemeanor in uttering counterfeit coin :- Held, that the wife was entitled to an acquittal, as it appeared that she uttered the money in the presence of her husband. Rex v. Price, 8 C. & P. 19-Park, Bosanquet and Coltman.

Where stolen goods are found in a man's house, and his wife, in his presence, makes a statement exonerating him, and criminating herself:-Semble, that, with respect to the admissibility of this statement in evidence against her, it may be a question whether the doctrine of presumed coercion does not apply. Rex v. Laugher, 2 C. & K. 225.

Where a woman is charged with comforting, harbouring and assisting a man who has committed a murder, if the counsel for the prosecution has reason to believe that she was married to the man, and it appears clearly that she considered herself as his wife, and lived with him as such for years, he will be justified in not offering any evidence against her, even though he has also reason to believe that the marriage was in some respects irregular, and, probably, invalid. v. Good, 1 C. & K. 185--Alderson and Coltman.

If husband and wife jointly commit a murder, both are equally amenable to the criminal law, as the doctrine of presumed coercion of the wife does not apply to murder. Reg.

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Husband and wife were jointly tried upon an indictment charging them .with feloniously wounding, with intent to disfigure. The jury found that the wife, at the time of the commission of the offense, acted under the coercion of her husband, and that she herself did not personally inflict any violence:—Held, that she could not be convicted. Reg. v. Smith, Dears. & B. C. C. 553; 4 Jur., N. S. 395; 27 L. J., M. C. 204; 8 Cox, C. C. 27.

### 5. Drunkards.

Drunkenness is not, in law, any excuse for crime. Pearson's case, 2 Lewin, C. C. 144—Park.

In case of stabbing where the prisoner has used a deadly weapon, the fact that he was drunk does not at all alter the nature of the case; but if he had intemperately used an instrument, not in its nature a deadly weapon, at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in Rex v. Meakin, him at the time. 7 C. & P. 297—Alderson.

If a man is drunk, this is no excuse for any crime he may commit; but where provocation by a blow has been given to a person, who kills another with a weapon which he happens to have in his hand, the drunkenness of the prisoner may be considered on the question, whether he was excited by passion, or acted from malice; as, also, it may be on the question, whether expressions used by the prisoner manifested a deliberate purpose, or were merely the idle expressions of a drunken Rex v. Thomas, 7 C. & P. 817—Parke.

Though drunkenness is no excuse for crime, it may be taken into account by the jury, when considering the motive or intent of a person acting under its influence. Reg. v. Gamlen, 1 F. & F. 90—Crowder.

Where, on the trial of an indictment for an attempt to commit sui- | corporation for a misfeasance at

cide, it appeared that the prisoner was at the time of the alleged offence so drunk that she did not know what she did:—Held, that this negatived the attempt to commit suicide. Reg. v. Moore, 3 C. & K. 319; 16 Jur. 750—Jervis.

### Foreigners.

A person naturalized in this country becomes, to all intents and purposes, a British subject, and ceases to be an alien. Reg. v. Manning, 2 C. & K. 903; 13 Jur. 962; T. & M. 155.

It is no defence on behalf of a foreigner charged in England with a crime committed there, that he did not know he was doing wrong, the act not being an offence in his own country. But though it is not a defence in law, yet it is a matter to be considered in mitigation of punishment. Rex v. Esop, 7 C. & P. 456—Bosanquet and Vaughan.

### 7. Corporations.

A corporation must prosecute in its corporate name. Rex v. Patrick, 1 Leach, C. C. 253.

A corporation aggregate may be guilty of a misdemeanor by nonfeasance, such as the nonrepair of bridges which it is their duty to repair. Reg. v. Birmingham and Gloucester Railway Co., 3 Railw. Cas. 148; 2 G. & D. 236; 9 C. & P. 469; 3 Q. B. 223; 6 Jur. 804.

In such a case an indictment is maintainable against it in its corporate name. Ib.

If indicted in the Queen's Bench, they can appear by attorney; but if indicted at the assizes, or sessions, where they cannot appear by attorney, they should apply for a certiorari and appear by attorney, and compel appearance by distress in-Reg. v. Birmingham and Gloucester Railway Company, 9 C. & P. 469—Parke. See S. C., 3 Q. B. 223; 1 G. & D. 457; 5 Jur. 40.

An indictment will lie against a

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Reg. v. Great North common law. of England Railway Company, 9 Q. B. 315; 10 Jur. 755; 16 L. J., M. C. 16.

An incorporated company demurred to a bill in equity, because the discovery thereby sought might subject it to criminal prosecution under 59 Geo. 3, c. 69 (Foreign Enlistment Act):—Held, that a corporation was not liable to be indicted under that act, and the court overruled the demurrer. Two Sicilies (King) v. Willcox, 1 Sim., N. S. 334; 14 Jur. 751; 19 L. J. Chanc. 488.

Where an indictment against a corporation, for the non-repair of a highway, is removed by certiorari, at the instance of the prosecutor, the prosecutor is not required by 16 & 17 Vict. c. 30, s. 5, to enter into recognisances to pay the defendant's costs in case of acquittal, indictments against corporations being excepted from the operation of the act. Reg. v. Manchester (Mayor, &c.), 7 El. & Bl. 453; 3 Jur., N. S. 839; 26 L. J., M. C. 65.

# 8. Infants.

"See 10 & 11 Vict. c. 82, and 13 "& 14 Vict. c. 37, for the speedy "and summary trial, conviction and "punishment of juvenile offenders; "and as to the care and education "of infants convicted of felony by "the Court of Chancery, see 3 & 4 "Vict. c. 90."

An infant, under the age of seven years, cannot incur the guilt of fel-Marsh v. Loader, 14 C. B., N. S. 535; 11 W. R. 784.

If a child, more than seven and under fourteen years of age, is indicted for felony, it will be left to the jury to say whether the offence was committed by him, and, if so, whether, at the time of the offence, the prisoner had a guilty knowledge that he or she was doing wrong. The presumption of law is, that a child of that age has not such guilty knowledge, unless the contrary is person to give one blow to the ma-

Rex v. Owen, 4 C. & P. proved. 236—Littledale.

A boy who, at the time of the commission of the offence of rape, is under fourteen, cannot, in point of law, be guilty of an assault with intent to commit a rape; and if he is under that age, no evidence is admissible to show that, in point of fact, he could commit the offence. Reg. v. Phillips, 8 C. & P. 736-Patteson: S. P., Rex v. Groom-bridge, 7 C. & P. 582—Gaselee.

A boy under fourteen years of age cannot, by law, be convicted of feloniously carnally knowing and abusing a girl under ten years old, even though it was proved that he was arrived at the full state of puberty. Reg. v. Jordan, 9 C. & P. 118-Williams: S. P. Reg. v. Brimilow, 9 C. & P. 366; 2 M. C. C.

A child under fourteen, indicted for murder, must be proved conscious of the nature of the act. Reg. v. Vamplew, 3 F. & F. 520— Pollock.

### 9. Peers.

# [4 & 5 Vict. c. 22.]

# 10. Persons under Compulsion.

An apprehension, though ever so well grounded, of having property wasted or destroyed, or of suffering any other mischief not endangering the person, will afford no excuse for joining or continuing with rebels. Rex v. M. Growther, 1 East, P. C.

But it is otherwise if the party joins from fear of death or by compulsion. Rex v. Gordon, 1 East, P. C. 71.

On an indictment on 7 & 8 Geo. 4, c. 30, s. 4, for breaking a threshing-machine, the judge allowed a witness to be asked whether the mob, by whom the machine was broken, did not compel persons to go with them, and then compel each chine; and also, at the time when the prisoner and himself were forced to join the mob, they did not agree together to run away from the mob the first opportunity. Rex v. Crutchley, 5 C. & P. 133.

A., who was insane, collected a number of persons together, who armed themselves, having a common purpose of resisting the lawfully constituted authorities; A. having declared that he would cut down any constable who came against him. A., in the presence of C. and D., two of the persons of his party, afterwards shot an assistant of a constable, who came to apprehend A. under a warrant:—Held, that C. and D. were guilty of murder, as principals in the first degree, and that any apprehension that C. and D. had of personal danger to themselves from A., was no ground of defence for continuing with him after he had so declared his purpose; and also, that it was no ground of defence that A. and his party had no distinct or particular object in view when they assembled together and armed themselves. Reg. v. Tyler, 8 C. & P. 616—Denman.

The apprehension of personal danger does not furnish any excuse for assisting in doing any act which is illegal. 16.

### II. Principals, Accessories and ABETTORS.

- 1. Principals, 25.
- 2. Accessories, 26.
- Abettors, 28.
   Trial, 28.
- 5. Indictment, 29.
- 6. Evidence, 30.

#### 1. Principals.

If several are out for the purpose of committing a felony, and upon an alarm run different ways, and ting one another, till they have act-Digitized by Microsoft®

one of them maims a pursuer to avoid being taken, the others are not to be considered principals in Rex v. White, R. & R. such act. C. C. 99.

If several act in concert to steal a man's goods, and he is induced by fraud to trust one of them in the presence of the others with the possession of the goods, and then another of the party entices the owner away, in order that the party who has obtained possession of the goods may carry them off, all will be guilty of the felony; the receipt by one, under such circumstances, being a felonious taking by all. Standley, R. & R. C. C. 305.

Going towards a place where a felony is to be committed in order to assist in carrying off the property, and assisting accordingly, will not make a man a principal, if he was at such a distance at the time of the felonious taking as not to be able to assist in it. Rex v. Kelly, R. & R. C. C. 421.

A person waiting outside of a house to receive goods, which a confederate is stealing in the house, is a principal in the theft. Owen, 1 M. C. C. 96.

Where a prosecutor left his goods in a cart standing in the street, and M. came and led the cart away, and having taken it a short distance, delivered it to another man, with directions to take it to his, M's, house. Upon the cart arriving at the house, S., who was at work in the cellar, having directed a companion to blow out the light, came up and assisted in removing the goods from the cart:—Held, that S. could not be indicted as a principal. Rex v. M'Makin, R. & R. C. C. 333, n.—Lawrence. And see Rex v. Dyer, 2 East, P. C. 767.

All those who assemble themselves together, with an intent even to commit a trespass, the execution whereof causes a felony to be committed; and continue together, abet-

ually put their design into execution; and also all those who are present when a felony is committed, and abet the doing of it, are principals in felony. Reg. v. Howell, 9 C. & P. 437—Littledale.

In misdemeanors all guilty participators are principals. Reg. v. Greenwood, 16 Jur. 390; 21 L. J., M. C. 127; 2 Den. C. C. 453.

It is not sufficient to make a man a principal in uttering a forged note, that he came with the utterer to the town where it was uttered, went out with him from the inn where they put up, joined him again in the street after the uttering at a little distance, and ran away when the utterer was apprehended. Rea v. Davis, R. & R. C. C. 113—Bayley.

If A. unlocks a door of a room of which he has the key, in order to allow B. to commit a larceny in it, and A. then goes away, and B., in his absence, enters the room and removes articles out of it, A. is not a principal in the larceny. Reg. v. Jeffries, 3 Cox, C. C. 85—Cresswell.

A principal in the second degree cannot at the same time be treated as a receiver. Reg. v. Perkins, 2 Den. C. C. 459; 16 Jur. 481; 21 L. J., M. C. 152; 5 Cox, C. C. 554.

To incite a servant to rob his master is a misdemeanor at common law; and an incitement to steal any silk that may be in the servant's care, without further defining the particular silk to be stolen, is sufficiently certain to support a conviction. Reg. v. Quail, 4 F. & F. 1076—Willes.

A soliciting and inciting a person to commit an offence where no other act is done except the soliciting and inciting, is a misdemeanor only. *Ib.* 

#### 2. Accessories.

Before the Fact.]—By 24 & 25 Vict. c. 94, s. 1, "whosoever shall "become an accessory before the "fact to any felony, whether the "same be a felony at common law, "or by virtue of any act passed or to

"be passed, may be indicted, tried, convicted and punished in all respects as if he were a principal felon." (Former provision, 11 & 12 Vict. c. 46, s. 1.)

By s. 2, "whosoever shall coun-"sel, procure or command any other "person to commit any felony, "whether the same be a felony at "common law or by virtue of any "act passed or to be passed, shall "be guilty of felony, and may be "indicted and convicted either as "an accessory before the fact to the "principal felony, together with the "principal felon, or after the con-"viction of the principal felon, or "may be indicted and convicted of "a substantive felony whether the principal felon shall or shall not "have been previously convicted, "or shall or shall not be amenable "to justice, and may thereupon be "punished in the same manner as "any accessory before the fact to "the same felony, if convicted as "an accessory, may be punished." (Former provision, 7 Geo. 4, c. 64, s. 9.)

A person is not to be convicted of larceny if doubtful whether an accessory before or after the fact. Reg. v. Munday, 2 F. & F. 170—Byles.

A servant let a person into his master's house on a Saturday afternoon, and concealed him there all night in order that he might rob the house; and on the Sunday morning left the premises in pursuance of the The man, previous arrangement. in the servant's absence, broke into the bed-room of the master, and stole the contents of the cash-box: -Held, that the man who took the property from the cash-box was rightly charged as a thief, and the servant who let him into the house as an accessory before the fact. Reg. v. Tuckwell, Car. & M. 215— Coleridge.

If a charge against an accessory is, that the principal felony was committed by persons unknown, it is no objection that the same grand jury has found a bill imputing the principal felony to J. S. Rex v. Bush, R. & R. C. C. 372.

It is not essential that there should have been any direct communication between an accessory before the fact and the principal felon. It is enough if the accessory directs an intermediate agent to procure another to commit a felony; and it will be sufficient even if the accessory does not name the person to be procured, but merely directs the agent to employ some person. Rex v. Cooper, 5 C. & P. 535—Parke.

The prisoner had procured certain drugs and gave them to his wife, with intent that she should take them in order to procure abortion. She took them in his absence and died from their effects. On an indictment against him for manslaughter, it was objected that he was only an accessory before the fact, and that in law there cannot be an accessory before the fact to manslaughter:—Held, that he was properly found guilty of manslaughter. Reg. v. Gaylor, 7 Cox, C. C. 253; Dears. & B. C. C. 288.

After the fact. \—By 24 & 25 Vict. c. 94, s. 3, "whosoever shall become "an accessory after the fact to any "felony, whether the same be a "felony at common law or by vir-"tue of any act passed or to be "passed, may be indicted and con-"victed either as an accessory after "the fact to the principal felony, "together with the principal felon, "or after the conviction of the prin-"cipal felon, or may be indicted and "convicted of a substantive felony, "whether the principal felon shall "or shall not have been previously "convicted, or shall or shall not be "amenable to justice, and may "thereupon be punished in like man-"ner as any accessory after the fact "to the same felony, if convicted "as an accessory, may be punish-"ed." (Former provision, 11 & 12 Vict. c. 46, s. 2.)

By s. 4, "every accessory after "the fact to any felony (except when "it is otherwise specially enacted), "whether the same be a felony at "common law or by virtue of any "act passed or to be passed, shall "be liable, at the discretion of the "court, to be imprisoned in the com-"mon gaol or house of correction "for any term not exceeding two "years, with or without hard labour, "and it shall be lawful for the court, "if it shall think fit, to require the "offender to enter into his own re-"cognizances and to find sureties, "both or either, for keeping the "peace, in addition to such punish-"ment; provided that no person "shall be imprisoned under this "clause, for not finding sureties, "for any period exceeding one "year."

H. & S. broke open a warehouse, and stole thereout thirteen firkins of butter, which they carried along the street thirty yards: they then fetched the prisoner, who was apprised of the robbery, and he assisted in carrying away the property; he was indicted for theft:—Held, that he was only an accessory, and not a principal. Rex v. King, R. & R. C. C. 332.

Where three persons agreed to utter a forged note, and one uttered it at Gosport, and the other two, by previous concert, waited at Portsmouth, they were held to be accessories. Rex v. Soares, 2 East, P. C. 974; R. & R. C. C. 25.

Although a statute which creates a new felony will attach to that felony all the common-law incidents to felony, so that accessories thereto will be included, yet it will go no further. Rex v. Sadi, 1 Leach, C. C. 468; 2 East, P. C. 748.

An accessory after the fact to a felony cannot be convicted upon an indictment charging the commission of the felony only: he should be indicted as an accessory after the fact. Reg. v. Fallon, 9 Cox, C. C. 242; L. & C. 217; 32 L. J., M. C. Digitized by Microsoft®

66; 8 Jur., N. S. 1217; 11 W. R.

74; 7 L. T., N. S. 471.

A. was indicted for the wilful murder of B., and C. was indicted for receiving, harbouring, and assisting A., well knowing that he had committed the felony and murder aforesaid:—Held, that if the offence of A. was reduced to manslaughter, C. might, notwithstanding, be found guilty as accessory after the fact. Rex v. Greenacre, 8 C. & P. 35—Tindal, Coleridge, Coltman, and Recorder Law.

Where a person is charged as accessory after the fact to a murder, the question for the jury is, whether such person, knowing the offence had been committed, was either assisting the murderer to conceal the death, or in any way enabling him to evade the pursuit of justice. *Ib*.

To substantiate the charge of harbouring a felon, it must be shewn that the party charged did some act to assist the felon personally. Reg. v. Chapple, 9 C. & P. 355—Re-

corder Law.

A prisoner who employed another person to harbour the principal felons may be convicted as accessory after the fact, though he himself did no act of relieving, and the prisoner may be found guilty on the uncorroborated testimony of the person who actually harboured. Rex v. Jarvis, 2 M. & Rob. 40—Gur-

ney.

A., a lad who was a clerk in a banking house, robbed his employers; after doing so, he went to the lodgings of B., who was much older than himself, and who had relations in America. A. stayed twenty minutes at B.'s lodgings; and after that, on the same night, A. and B. started together by the coach, and went from Reading to Liverpool, intending to embark for America:—Held, that B. might be convicted as an accessory after the fact, in harbouring, receiving, and maintaining A., the principal felon. Rex v. Lee, 6 C. & P. 536—Williams.

3. Abettors.

In Felonies.]—If A. is charged with the offence of inflicting an injury dangerous to life, with intent to murder, and B. is charged with aiding and abetting him, it is essential to make out the charge as against B., that B. should have been aware of A.'s intention to commit murder. Reg. v. Cruse, 8 C. & P. 541—Patteson.

Persons present, aiding and abetting, are principals in the second degree, and are within the Riot Act.

Rex v. Royce, 4 Burr. 2073.

In Misdemeanors.]—By 24 & 25 Vict. c. 94, s. 8, "whosoever shall aid, abet, counsel, or procure the commission of any misdemeanor, whether the same be a misdemeanor at common law or by virtue of any act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender." (Former provision, 7 & 8 Geo. 4, c. 30, s. 26.)

#### 4. Trial.

By 24 & 25 Vict. c. 94, s. 5, " if "any principal offender shall be in " anywise convicted of any felony, it " shall be lawful to proceed against " any accessory, either before or af-"ter the fact, in the same manner " as if such principal felon had been " attainted thereof, notwithstanding "such principal felon shall die, or " be pardoned, or otherwise deliv-"ered before attainder; and every "such accessory shall upon convic-"tion suffer the same punishment "as he would have suffered if the "principal had been attainted." (Former provision, 7 Geo. 4, c. 64, s. 11.)

By s. 6, "any number of acces-"sories at different times to any fel-"ony, and any number of receivers "at different times of property stol-"en at one time, may be charged "with substantive felonies in the "same indictment, and may be tried "together, notwithstanding the prin"cipal felon shall not be included "in the same indictment, or shall "not be in custody or amenable to "justice." (Former provision, 14

& 15 Vict. c. 100, s. 15.)

By s. 7, "where any felony shall " have been wholly committed with-"in England or Ireland, the offence " of any person who shall be an ac-"cessory either before or after the "fact to any such felony may be "dealt with, inquired of, tried, de-"termined, and punished by any court which shall have jurisdic-"tion to try the principal felony, or "any felonies committed in any "county or place in which the act "by reason whereof such person "shall have become such accessory "shall have been committed; and "in every other case the offence of "any person who shall be an acces-" sory either before or after the fact "to any felony may be dealt with, "inquired of, tried, determined, and "punished by any court which shall "have jurisdiction to try the prin-"cipal felony, or any felonies com-"mitted in any county or place in "which such person shall be appre-"hended or in custody, whether the "principal felony shall have been "committed on the sea or on the "land, or begun on the sea and "completed on the land, or begun "on the land and completed on the " sea, and whether within her Maj-"esty's dominions or without, or "partly within her Majesty's do-"minions and partly without; pro-"vided that no person who shall be "once duly tried either as an acces-"sory before or after the fact, or "for a substantive felony, under "the provisions hereinbefore con-"tained, shall be liable to be after-"wards prosecuted for the same of-"fence." (Former provision, 7 Geo. 4, c. 64, ss. 9, 10, 11 & 12 Vict. c. 46, s. 2.)

Where a principal and an accessory are indicted together, they will not be allowed to sever in their challenges so as to be tried separately.

Reg. v. Fisher, 3 Cox, C. C. 68— Platt.

An accessory after the fact indicted in the ordinary way with the principal felon, may, since 11 & 12 Vict. c. 46, s. 2, be tried before the principal. Reg. v. Hansill, 3 Cox, C. C. 597.

Jurisdiction of Admiralty.]—By s. 9, "where any person shall, with-" in the jurisdiction of the admiralty " of England or Ireland, become an "accessory to any felony, whether "the same be a felony at common " law or by virtue of any act passed " or to be passed, and whether such "felony shall be committed within "that jurisdiction or elsewhere, or "shall be begun within that juris-"diction and completed elsewhere, " or shall be begun elsewhere and "completed within that jurisdic-"tion, the offence of such person "shall be felony; and in any indict-" ment for any such offence the ven-" ue in the margin shall be the same " as if the offence had been commit-"ted in the county or place in "which such person shall be indict-" ed, and his offence shall be averred "to have been committed on the "high seas;' provided that nothing "herein contained shall alter or af-"fect any of the laws relating to "the government of her Majesty's " land or naval forces."

#### 5. Indictment.

A count charging a person with being accessory before the fact, may be joined with a count charging him with being accessory after the fact to the same felony, and the prosecutor cannot be required to elect upon which he will proceed, as the party may be found guilty upon both. Rex v. Blackson, 8 C. & P. 43—Park and Patteson.

An indictment in two counts charged A. and B. jointly with stealing. A third count charged A. alone with receiving the stolen goods. At the trial no evidence

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was offered against B., and he was acquitted, in order that he might be called as a witness against A. A. was an accessory before the fact to the stealing by B., and he afterwards received the stolen goods. The jury returned a verdict of guilty against A., which was entered upon all the counts:—Held, that he was not entitled to an acquittal upon the first two counts by reason of the principal, B., having been acquitted, the 11 & 12 Vict. c. 46, s. 1, having made the crime of being an accessory before the fact a substantive felony. Reg. v. Hughes, Bell, C. C. 242; 8 Cox, C. C. 278; 6 Jur., N. S. 177; 29 L. J., M. C. 71; 8 W. R. 195; 1 L. T., N. S. 450.

Held also, that there was no inconsistency in the verdict found by the jury, and entered upon all the counts, and therefore the conviction

could be supported. *Ib.* 

In indicting a person for felony, since 11 & 12 Vict. c. 46, it is immaterial whether he is a principal in the first or the second degree, or an accessory before the fact, as in either case he is indictable as a principal. Reg. v. Manning, 2 C. & K. 903.

If two persons are indicted for murder, the one as a principal in the first degree, and the other as being present, aiding and assisting to commit it, the jury may find the principal in the first degree not guilty, and convict the principal in the second degree. Rex v. Taylor, 1 Leach, C. C. 360; S. C., nom. Shaw's case, 1 East, P. C. 351.

Three persons were charged with a larceny, and two others as accessories, in separately receiving portions of the stolen goods. The indictment also contained two other counts, one of them charging each of the receivers separately with a substantive felony, in separately receiving a portion of the stolen goods. The principals were acquitted:—Held, that the receivers might be convicted on the two last counts of

the indictment. Reg. v. Pulham, 9 C. & P. 280—Gurney.

An indictment stated that a certain evil-disposed person stole certain goods; that L. C. incited him to do so; that E. C. did the same; that E. M. received a portion of the property, knowing it to have been stolen; it also charged A. and the before mentioned E. C. as re-All these persons having ceivers. been found guilty, the conviction was held good against all except L. C., who was merely charged as accessory before the fact, and judgment was given as to the charges of receiving only. Reg. v. Caspar, 9 C. & P. 289: 2 M. C. C. 101.

A count charged A. with the murder of B., and also C. and D. with being present, aiding and abetting A. in the commission of the murder. A was an insane person:

—Held, therefore, that C. and D. could not be convicted on this count. Reg. v. Tyler, 8 C. & P.

615—Denman.

#### Evidence.

A person indicted as an accessory before the fact, cannot be convicted of that charge upon evidence proving him to have been present, aiding and abetting. Rex v. Gordon, 1 Leach, C. C. 515; 1 East, P. C. 352.

An indictment against an accessory to a felony, committed by a person unknown, cannot be supported, if it appears that the principal felon acknowledged his guilt before the grand jury. Rex v. Walker, 3 Camp. 264—Le Blanc.

An accessory may controvert the guilt of the principal, notwithstanding the record of his conviction. Rex v. Smith, 1 Leach, C. C. 288.

An averment of the conviction of the principal is supported by the production of the record, however erroneous the judgment may be. Rex v. Baldwin, 3 Camp, 265—Thompson.

On an indictment against an ac-

eessory, a confession by the principal is not admissible in evidence to prove the guilt of the principal. Rex v. Turner, 1 M. C. C. 347.

It must be proved aliunde, especially if the principal is alive. *Ib*.

A. and B. were indicted for lareny as principals; A. had been sent by his master to deliver goods to C. He only delivered part, and the rest was stolen, and found in the possession of B.:—Held, that it was a question for the jury whether B. was present at the time when A. separated the stolen portion from the bulk; for that if he was, both were rightly charged as principals. Rex v. Butteris, 6 C. & P. 147—Gurney.

# III. ABDUCTION OF WOMEN AND CHILDREN.

1. Women, 31.

Children, 34.
 Indictment, 35.

4. Evidence, 35.

#### 1. Women.

By 24 & 25 Viet. c. 100, s. 53, "where any woman of any age shall "have any interest, whether legal or "equitable, present or future, abso-"lute, conditional or contingent, in "any real or personal estate, or "shall be a presumptive heiress or "co-heiress, or presumptive next of "kin, or one of the presumptive next " of kin to any one having such in-"terest, whosoever shall, from mo-"tives of lucre, take away or detain "such woman against her will, with "intent to marry or earnally know "her, or to cause her to be married "or carnally known by any other "person;

"And whosoever shall fraudu"lently allure, take away or detain
"such woman, being under the age
"of twenty-one years, out of the
"possession and against the will

"of her father or mother, or of "any other person having the law-"ful care or charge of her, with in-"tent to marry or earnally know "her, or to cause her to be married "or carnally known by any other "person, shall be guilty of a felony, "and, being convicted thereof, shall "be liable, at the discretion of the "court, to be kept in penal serv-"itude for any term not exceeding "fourteen years and not less than "five years (27 & 28 Vict. c. 47), "or to be imprisoned for any term "not exceeding two years, with or "without hard labour;

"And whosoever shall be con-"victed of any offence against this "section shall be incapable of tak-"ing any estate or interest, legal or "equitable, in any real or personal "property of such woman, or in "which she shall have any such in-"terest, or which shall come to her "as such heiress, co-heiress or next "of kin as aforesaid; and if any "such marriage as aforesaid shall "have taken place, such property "shall, upon such conviction, be set-"tled in such manner as the Court " of Chancery in England or Ireland "shall upon any information at the "suit of the Attorney-General, ap-" point." (Previous enactment, 9 Geo. 4, c. 31, s. 19.)

By s. 54, "whosoever shall by "force take away or detain against "her will any woman, of any age, "with intent to marry or earnally "know her, or to cause her to be "married or carnally known by any "other person, shall be guilty of a "felony, and, being convicted there-"of, shall be liable, at the discretion "of the court, to be kept in penal " servitude for any term not exceed-"ing fourteen years, and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour." (Former provision, 10 Geo. 4, c. 34 [Irish], s. 22, extended to England.) By s. 55, "whosoever shall un-

"lawfully take or cause to be taken "any unmarried girl, being under "the age of sixteen years, out of the "possession and against the will of "her father or mother, or of any "other person having the lawful "care or charge of her, shall be "guilty of a misdemeanor, and, be-"ing convicted thereof, shall be li-" able, at the discretion of the court, "to be imprisoned for any term not "exceeding two years, with or with-"out hard labour." (Similar to 9 Geo. 4, c. 31, s. 20.)

By 9 Geo. 4, c. 31, the 3 Edw. 1, c. 13; 3 Hen. 7, c. 2; 39 Eliz. c. 9; 4 & 5 Ph. & M. c. 8; 1 Geo. 4, c. 115, and so much of 6 Ric. 2, st. 1, c. 6, as related to this subject, were

repealed.

By 24 & 25 Vict. c. 95, the 9 Geo. 4, c. 31, ss. 19 and 20, and 7 Will. 4 & 1 Viet. c. 85, s. 11, are repealed.

Semble, that where a man by false and fraudulent representations induced the parents of a girl between ten and eleven years of age to allow him to take her away, such taking away of the girl was an abduction within 9 Geo. 4, c. 31, s. 20. Reg. v. Hopkins, Car. & M. 254— Gurney.

A., a girl under sixteen, who was in service, was, as she was returning from an errand, asked by B. if she would go to London, as B's mother wanted a servant, and would give her 5l. wages. A. and B. went away together to Bilston, where both were found, and B. apprehended:-Held, that this was not such a taking, or causing to be taken, of A., as was sufficient to constitute the offence of abduction under 9 Geo. 4, c. 31, s. 20. Reg. v. Meadows, 1 C. & K. 399; Dears. C. C. 161, n.—Parke.

A girl under sixteen having by persuasion been induced by the prisoner to leave her father's house, and go away with him without the consent of the father, left her home alone by a preconcerted arrangement be-

appointed, where she was met by the prisoner, and then they went away together some distance, without the intention of returning:-Held, first, that there was a taking of the girl out of the father's possession, within 9 Geo. 4, c. 31, s. 20, by the prisoner when he met the girl, and went away with her at the appointed place, as up to that moment she had not absolutely reher father's protection. nounced Reg. v. Mankletow or Manktelow, Dears. C. C. 159; 17 Jur. 352; 22 L. J., M. C. 115; 6 Cox, C. C. 133.

Held, secondly, such taking need not be by force, actual or constructive, and it is immaterial whether the girl consents or not. Ib.

The case of Reg. v. Meadows (1 C.

& K. 399) explained. Ib.

A. went in the night to the house of B., and placed a ladder against a window, and held it for J., the daughter of B., to descend, which she did, and then eloped with A. J. was a girl under sixteen, viz: fifteen years old:—Held, that this was a taking of J. out of the possession of her father within 9 Geo. 4, c. 31, s. 20, although J. had herself proposed to A. to bring the ladder, and to elope with him. Reg. v. Robins, 1. C. & K. 456—Tindal.

Held, also, that it was no defence for A. that he did not know that J. was under sixteen, or that, from her appearance, he might have thought she was a greater age.

indictment for abduetion on 9 Geo. 4, c. 31, s. 19, the jury ought not to convict the prisoner, unless satisfied that he committed the offence from motives of lucre; but evidence of expressions used by him respecting the property of the lady, such as his stating that he had seen the will of one of her relatives (naming him), and that she would have 2201. a year, are important for the consideration of the jury, in coming to a conclusion tween them, and went to a place | whether he was actuated by motives

of lucre or not. Reg. v. Barratt, 9 C. & P. 387—Parke.

It was no answer to an indictment under 9 Geo. 4, c. 31, s. 20, for taking away a girl under the age of sixteen years, to show that the girl alleged to be abducted went voluntarily from her home in consequence of the persuasion of the prisoner, to a place at some distance, where she met the prisoner, and whence she went away with him without any reluctance. Reg. v.Kipps, 4 Cox, C. C. 167.

On an indictment for taking an unmarried girl under the age of sixteen from the possession of her father:—Held, that the statute was satisfied, though the man and the girl quitted the house together in consequence of a proposition which emanated from the girl herself to that effect, and a statement by her to the man that she intended to leave her father's house. Reg. v. Biswell, 2 Cox, C. C. 279—Alderson.

In order to constitute an offence within 9 Geo. 4, c. 31, s. 20, it is sufficient, if, by moral force, a willingness on the part of the girl to go away with the prisoner is created; but if her going away with him is entirely voluntary, no offence is com-Reg. v. Handley, 1 F. & F. mitted. 648-Wightman.

A girl, under sixteen, who was living in her father's house, was induced by the prisoner to go to a chapel and to be married to him. She was only away from home for an hour or two, and after her return continued to live with her father as before, he being ignorant of what had taken place. The marriage was never consummated: Held, that there was sufficient evidence of her having been taken out of her father's possession to satisfy 9 Geo. 4, c. 31, s. 20. Reg. v. Baillie, 8 Cox, C. C. 238—Chambers, C. S., and Gurney, Recorder.

When a girl, under sixteen, has been found in the streets by herself

ing out of the possession of the father, even though he is living in the place and she lives with him. Reg. v. Green, 3 F. & F. 274-Martin.

Where a person was indicted for the abduction of a girl under sixteen, and it did not appear that he had any improper motive, the jury was directed that if they thought he merely wished to have the child to live with him, and honestly believed that he had a right to the custody of the child, although he had no such right, they ought to acquit him. Reg. v. Tinkler, 1 F. & F. 513—Cockburn.

A. was convicted for taking an unmarried girl, under sixteen, out of the possession of her father, and against his will. It was proved that A. (who had previously stayed out with the girl for a night), having met her by arrangement, stayed with her away from her father's house for three days, sleeping with her at night; that he took her away without her father's consent, and against his will, in order to gratify his passions, and then allow her to return home, but not with a view of keeping her away from her home permanently:-Held, that the evidence justified the conviction. Reg.v. Timmins, Bell, C. C. 276; 8 Cox, C. C. 401; 30 L. J., M. C. 45; 6 Jur., N. S. 1309; 9 W. R. 36; 3 L. T., N. S. 337.

It is not necessary to shew a trespass, or anything of that nature, in the taking, other than the act of taking. Reg. v. Frazier, 8 Cox, C. C. 446—Pollock.

A. was indicted for fraudulently alluring C. out of the possession of her mother and stepfather, the latter having the lawful care of her; and B. with being an accessory before the fact. C. was sent by her mother to live with her grand-Instead of going there, she mother. went to B.'s house, and did not return home when desired to do so by and seduced away, that is not a tak- her mother. After remaining with Fish. Dig.—3 Digitized by Microsoft®

B. a month, she left with A., her paternal uncle, and was married to him without her mother's knowledge:—Held, that the averments that the girl was in the possession and under the care of her stepfather might be rejected as surplusage. Reg. v. Burrell, L. & C. 354; 12 W. R. 149; 9 L. T., N. S. 426; 33 L. J., M. C. 54; 9 Cox, C. C. 368.

Held, also, upon objection, that there was no evidence that the alluring was fraudulent, or that the girl was taken out of her mother's possession, that the facts did not

support the indictment.

If a man, by previous promises to a girl under sixteen, as to what he will do if she will leave her parents' house and go to live with him, induces her at length to do so, and then receives and harbours her secretly, he is liable to be convicted for taking her out of the possession of her parents, even although he does not meet her by any previous arrangement and is not otherwise actually a party to her act in leaving. Reg. v. Robb, 4 F. & F. 59—Pollock.

On an indictment for unlawfully taking away a girl against the will of her parents, if they have encouraged her in a lax course of life, the case does not come within 9 Geo. 4, c. 31, s. 90. Reg. v. Primelt, 1 F. & F. 50--Cockburn.

A man dealing with an unmarried girl does so at his peril; and if she turns out to be under sixteen, is liable to be indicted for unlawfully taking her away. Reg. v. Ollifier, 10 Cox, C. C. 402—Bramwell.

A man is not bound to return to her father's custody a girl who, without any inducement on his part, has left her home, and has come to him; but if, at any time, he has attempted to induce her to leave home without her parents' consent, and she afterwards does so, he is guilty of the abduction of the girl, even though he disapproves of

the act at the particular time at which she gives effect to his previous

persuasions. Ib.

The prisoner met a girl under sixteen years of age in the street and induced her to go with him to a place at some distance, where he seduced her, and detained her for some hours. He then took her back to the street where he had met her, and she returned home to her father's:—Held, in the absence of any evidence that the prisoner knew or had reason for knowing, or that he believed that the girl was under the care of her father at the time, that the conviction under 24 & 25 Vict. c. 100, s. 55, could not be sustained. Reg. v. Hibbert, 19, L. T., N. S. 799; 17 W. R. 384; 38 L. J., M. C. 61; 1 L. R., C. C. 184; 11 Cox, C. C. 246.

### 2. Children.

By 24 & 25 Viet, c. 100, s. 56, "whosoever shall unlawfully, "either by force or fraud, lead or "take away, or decoy or entice "away or detain, any child under "the age of fourteen years, with in-"tent to deprive any parent, guar-"dian or other person having the "lawful care or charge of such child "of the possession of such child, or " with intent to steal any article up-"on or about the person of such "child, to whomsoever such article "may belong, and whosoever shall, "with any such intent, receive or "harbour any such child, knowing "the same to have been, by force "or fraud, led, taken, decoyed, en-"ticed away or detained, as in this "section before mentioned, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding seven years, "and not less than five years (27 & "28 Vict. c. 47), or to be imprison-"ed for any term not exceeding "two years, with or without hard "labor, and, if a male under the

"age of sixteen years, with or with"out whipping; provided that no
"person who shall have claimed
"any right to the possession of such
"child, or shall be the mother or
"shall have claimed to be the fa"ther of an illegitimate child, shall
"be liable to be prosecuted by vir"the hereof on account of the get"ting possession of such child, or
"taking such child out of the pos"session of any person having the
"lawful charge thereof." (Former provision, 9 Geo. 4, c. 31, s. 21,
repealed by 24 & 25 Vict. c. 95.)

#### 3. Indictment.

If, on an indictment for abduction on 9 Geo. 4, c. 31, s. 19, the jury was not satisfied that the prisoner was actuated by motives of lucre, and they were satisfied that he used force to the person of the lady in taking her away, and that he took her away against her consent, they might convict him of an assault under 7 Will. 4 & 1 Vict. c. 85, s. 11. Reg. v. Barratt, 9 C. & P. 387—Parke.

### 4. Evidence.

The wife is a witness as well for as against her husband, although she has cohabited with him from the day of the marriage. Rex v. Perry, 1 Russ. C. & M. 949.

Where several defendants were indicted for a misdemeanor in conspiring to carry away a young lady, under the age of sixteen, from the custody appointed by her father, and to cause her to marry one of the defendants; and, in another, for conspiring to take her away by force, being an heiress, and to marry her to one of the defendants:-Held, that, assuming the young lady to be at the time the lawful wife of one of the defendants, she was a competent witness for the prosecution, although there was no evidence to support that part of the indictment which charged force. Rex v. Wakefield, 2 Lewin, C. C. 279.

A prisoner was taken into custody at the house of his brother on a charge of abduction; when he was taken, a letter was found in a writing-desk in the room in which he and his brother were. The letter was directed to a person in the neighborhood of the prisoner's late The police-officer was going to open it, when the prisoner told him it had nothing to do with the business that he had come about:—Held, that the letter was receivable in evidence on the trial of the prisoner for the abduction. Reg. v. Barratt, 9 C. & P. 387— Parke.

On a prosecution on 3 Hen. 7, c. 2, it was essential that there should be a continuance of the force into the county where the defilement took place. Rex v. Gordon, 1 Russ. C. & M. 943.

# IV. Adulteration of Food or Drink.

- Selling Unwholesome Provisions, 35
   Engrossing or Regrating, 36.
- 1. Selling Unwholesome Provisions.

23 & 24 Vict: c. 84, "enacts "penalties on persons selling articles of food or drink, knowing the "same to be injurious to health; "and see 11 & 12 Vict. c. 107, s. 3."

Victuallers, brewers and other common dealers in victuals, who in the course of their trade sell provisions unfit for the food of man, are criminally responsible under 51 Hen. 3, "Pillor' et Tumbrel' &c." and of Edw. 1, "De Pistoribus et Hasiatoribus et aliis Vitellariis," if they do so knowingly, and probably if they even do not, and are liable civilly to the vendee without any fraud on their part or warranty of the soundness of the thing sold: but a private person, not following any of these trades, who sells an unwholesome article for food, is not

liable under such circumstances. Burnby v. Rollitt, 16 M. & W. 644; 11 Jur. 827; 17 L. J., Exch. 190.

A meat salesman can be indicted at common law for knowingly sending or exposing meat for sale in a public market as fit for human food, which, in fact, was not so. Stevenson, 3 F. & F. 106—Willes.

So a carrier, for knowingly bringing to market meat unfit for human food. Reg. v. Jarvis, 3 F. & F.

108—Gurney, Recorder.

But a person is not indictable for sending to a meat salesman meat he knows to be unfit for human food, if he does not know and intend that it is to be sold as human food. Reg. v. Crawley, 3 F. & F. 109-Willes.

Mixing alum with bread in such manner as that crude lumps were found in the bread, is indictable. Rex v. Dixon, 3 M. & S. 11; 4

Camp. 12.

Indictment against a defendant, who was employed to make bread for the Military Asylum, which charged that he delivered to J. H. divers, to wit, 297 loaves, as and for good household bread, for the use and supply of the asylum and the children belonging thereto, whereas the loaves were not good household bread, but contained divers noxious and unwholesome materials not fit for the food of man, is sufficiently certain, without shewing what the noxious materials were, or that the defendant intended to injure the children's health.

An indictment does not lie against a miller for receiving good barley to grind at his mill, and delivering a mixture of oat and barley meal differing from the produce of the barley, and which is musty and unwholesome. Rex v. Haynes, 4 M.

& S. 214.

Indictment against a miller, charging in the same count that he received two separate parcels of barley, each of four bushels, to be ground at his mill, and that he delivered |

three bushels 46 lbs of oat-meal and barley-meal mixed, other and different than the produce of the four bushels, is ill, for the uncertainty to which of the four bushels it relates.

## 2. Engrossing or Regrating.

The common-law offence of engrossing or regrating applied only with respect to the necessaries of life. Pettamberdass v. Thackoorseydass, 5 Moo. Ind. App. 109; 7 Moore, P. C. C. 239; 15 Jur. 257; and 7 & 8 Vict. c. 24, abolished the law of engrossing or regrating.

#### V. Arson and Burning.

Statutes, 36.
 The Offence, 36.

2. The Offence, 30.
3. Places of Divine Worship, 37. 4. Dwelling-houses with Persons there-

in, 38. 5. What Houses or Buildings, 38.

6. Railway Stations and Buildings, 7. Public Buildings, 40.

8. Other Buildings, 40.

9. Property in Buildings, 41. 10. By Gunpowder and Explosive Sub-

stances, 41.
11. Crops, Stacks or Woods, 42.

12. Coal and other Mines, 43. 13. Parties Indictable, 44.

Indictment, 44. Evidence, 45.

## 1. Statutes.

The 7 & 8 Geo. 4, c. 27, repealed 23 Hen. 8, c. 1, 43 Eliz. c. 13, 22 & 23 Car. 2, c. 7, 9 Geo. 1, c. 22, (the Black Act), 9 Geo. 3, c. 29, and 52 Geo. 3, c. 130; and 9 Geo. 4, c. 31, repealed 43 Geo. 3, c. 58; and 24 & 25 Vict. c. 95, repealed 7 & 8 Geo. 4, c. 30, 7 Will. 4 & 1 Vict. c. 89; 7 & 8 Vict. c. 62, and 9 & 10 Vict.

24 & 25 Vict. c. 97, consolidates and amends the statute law of England and Ireland in relation to this offence.

2. The Offence.

By 24 & 25 Vict. c. 97, s. 58, "every punishment and forfeiture "by the act imposed on any person maliciously committing the offence of burning or setting fire, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise."

By s. 59, "the provisions of the "act apply to every person who, "with intent to injure or defraud "any other person, although the of-"fender shall be in possession of the "property against or in respect of "which such act shall be done."

The feloniously burning of a dwelling-house is arson at common law; but the burning of an outhouse is a statutable felony. Rew v. Nash, 2 East, P. C. 1021.

One entitled to dower only out of a house, which was leased to another, may commit arson by burning it. *Rex* v. *Harris*, 2 East, P. C. 1023.

If a person sets fire to a stack, the fire from which is likely to and which does communicate to a barn, which is thereby burnt, the person is indictable for burning the barn. Rex v. Cooper, 5 C. & P. 535—Parke.

To constitute a setting on fire it is not necessary that any flame should be visible. Rex v. Stallion, 1 M. C. C. 398.

It was proved that the floor near the hearth was scorched. It was charred in a triffing way. It had been at a red heat, but not in a blaze:—Held, that this would be a sufficient burning to support an indictment for arson. Reg. v. Parker, 9 C. & P. 45—Parke and Bosanquet.

One put by overseers of the poor into a house to live there is merely a servant, and his possession is theirs, and therefore he may commit arson by burning it. *Rew* v. *Gowan*, 2 East, P. C. 1027; 1 Leach, C. C. 246.

Burning a man's own house contiguous to others is a misdemeanor at common law. Rev v. Probert, 2 East, P. C. 1030; S. P. Rev v. Isaac, 2 East, P. C. 1031.

A small faggot was set on fire on the boarded floor of a room, and the faggot was nearly consumed; the boards of the floor were scorched black, but not burnt, and no part of the wood of the floor was consumed:—Held, not a sufficient burning to support an indictment for arson. Reg. v. Russell, Car. & M. 541—Cresswell.

Upon a trial for arson with intent to defraud an insurance company, evidence that the prisoner had made claims on two other insurance companies in respect of fires which had occurred previously, and in succession, was admitted for the purpose of showing that the fire which formed the subject of the trial was the result of design and not of accident. Reg. v. Gray, 4 F. & F. 1102—Willes.

An unfurnished structure intended to be used as a house, is not a house within the meaning of the 24 & 25 Vict. c. 97, s. 2. Reg. v. Edgell, 11 Cox, C. C. 132—Lush.

## 3. Places of Divine Worship.

By 24 & 25 Viet. c. 97, s. 1, "whosoever shall unlawfully and " maliciously set fire to any church, "chapel, meeting-house, or other "place of divine worship, shall be guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not "exceeding two years, with or with-"out hard labour, and with or with-" out solitary confinement, and, if a "male under the age of sixteen " years, with or without whipping." (Former enactment, 7 Will. 4 & 1 Vict. c. 89, s. 3.)

#### Dwelling-houses with Persons. therein.

By 24 & 45 Vict. c. 97, s. 2, "whosoever shall unlawfully and "maliciously set fire to any dwell-"ing-house, any person being there-"in, shall be guilty of felony, and, "being convicted thereof, shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude for life, or for any term not "less than five years (27 & 28 Vict. "c. 47); or to be imprisoned for "any term not exceeding two years, " with or without hard labour, and "with or without solitary confine-"ment, and, if a male under six-"teen, with or without whipping." (Previous enactment, 7 Will. 4 & 1 Vict. c. 89, s. 3, and was a capital offence by s. 2.)

A. was indicted on this statute for the capital offence of setting fire to B.'s dwelling-house, B. being therein. A. had set fire to an outhouse, under the same roof as the dwelling-house, and the fire communicated to the dwelling-house At the time that A. and burnt it. set fire to the outhouse, B. was in the dwelling-house, but had left it before the fire reached the dwellinghouse:—Held, that the capital charge could not be sustained, as B. was not in the house at the time it was on fire. Reg. v. Fletcher, 2 C. & K. 215—Patteson.

On an indictment on 7 Will. 4 & 1 Vict. c. 89, s. 2, for the capital offence of setting fire to a dwellinghouse, some person being therein (the indictment not charging any intent to injure or defraud any person), the prisoner could be convicted of the transportable offence of setting fire to the house, under sect. 3; as an allegation of an intent to injure or defraud some person was essential to an indictment under Reg. v. Paice, 1 C. & that section. K. 73; S. P. Reg. v. Fletcher, 2 C. & K. 215.

The house set fire to must be a

occupied by none but prisoners is not a dwelling-house for this purpose. Reg. v. Connor, 2 Cox, C. C. 65— Parke.

## 5. What Houses or Buildings.

By 24 & 25 Vict. c. 97, s. 3, "whosoever shall unlawfully and "maliciously set fire to any house, " stable, outhouse. coachhouse, " warehouse, office, shop, mill, malt-"house, hop-oast, barn, storehouse, "granary, hovel, shed, or fold, or "to any farm building, or to any "building or erection used in farm-"ing land, or in carrying on any "trade or manufacture, or "branch thereof, whether the same "shall then be in the possession of "the offender or in the possession of "any other person, with "thereby to injure or defraud any "person, shall be guilty of felony, " and, being convicted thereof, shall " be liable, at the discretion of the "court, to be kept in penal servi-"tude for life, or for any term not "less than five years (27 & 28 Vict. "c. 47); or to be imprisoned for " any term not exceeding two years, " with or without hard labour, and "with or without solitary confine-" ment, and, if a male under the age "of sixteen years, with or without "whipping." (Former provisions, 7 Will. 4 & 1 Vict. c. 89, s. 3, and 7 & 8 Vict. c. 62, s. 1.)

A common gaol was kept in repair by rates levied upon the inhabitants of the liberty in and for which the gaol was. The keeper of the gaol was appointed by the justices of the liberty. He did not reside at the gaol, but kept the keys and had the charge of it. He was also an inhabitant, and liable to be rated to the repair of the gaol:—Held, that in an indictment under 7 & 8 Vict. c. 62, s. 1, for setting fire to the gaol, it should be laid to be in the possession of the keeper of the gaol, but the intent of the prisoner should dwelling-house, and a common gaol | have been laid to be to injure the inhabitants of the liberty. Reg. v. Connor, 2 Cox, C. C. 65—Parke.

A. was indicted for setting fire to The building set on an out-house. fire was a thatched pigsty, situate in a yard in the possession of the prosecutor, into which yard the back door of his house opened, and which yard was bounded by fences and by other buildings of the prosecutor, and by a cottage and barn, which were let by him to a tenant, but which did not open into this yard: -Held, that this pigsty was an outhouse within 7 Will. 4 & 1 Vict. c. 89, s. 3. Reg. v. Jones or Janes, 1 C. & K. 303 : 2 M. C. C. 308.

A building erected not for habitation, but for workmen to take their meals, and dry their clothes in, which has four walls, a roof, a door, but no window, but in which a person slept with the knowledge, but without the permission, of the owner, was not a house, the setting fire to which was felony, within 7 Will. 4 & 1 Vict. c. 89, s. 3. Reg. v. England, 1 C. & K. 533—Tindal.

A. was indicted for having set fire to a building twenty-four feet square, the sides of which were composed of wood, with glass windows; it was roofed, and was used by a gentleman, who built houses on his own property, for the purpose of disposing of them, as a storehouse for seasoned timber, as a place of deposit for tools, and as a place where timber was prepared for use:—Held, that this was a shed, and also an erection used in carrying on trade. Reg. v. Amos, T. & M. 423; 2 Den. C. C. 65; 15 Jur. 90; 20 L. J., M. C. 103; 5 Cox, C. C. 222.

Burning a stable is not supported by proof of burning a shed, which has been built for and used as a stable originally, but has latterly been used as a lumber shed only. *Reg.* v. *Colley*, 2 M. & Rob. 475—Cresswell.

A first count charged the firing of a certain building used by O. for carrying on his trade as a builder; the same roof, was a lean-to, in

and other counts laid the arson as of a stable, an outhouse, and a stack of haulm. It was proved that some haulm had been carted from a field and stacked in a building originally intended for a stable, but afterward divided into three parts by a wall, which reached only to the eaves. One part was used as a stable, and the part fired contained the haulm and a lot of tiles of the prosecutor, who was a builder. The fire had been kindled on the haulm: - Held, first, that the building was improperly described as an outhouse, a shed, or a stable. Reg. v. Munson, 2 Cox, C. C. 186—Coleridge.

Held, secondly, that the count charging an attempt to set fire to a stack of haulm was sufficient, inasmuch as it is not necessary to the character of a stack that it should be erected out of doors. *Ib*.

Held, thirdly, that it was a building used by the prosecutor in carrying on his trade. *Ib.* 

A building which never had been inhabited, but which was constructed as and intended for a dwelling-house, but which contained straw, boards and implements of husbandry, was not a house, an outhouse, or a barn within 9 Gco. 4, c. 22, s. 7. Elsmore v. St. Briavels, 2 M. & R. 514; 8 B. & C. 461.

A building separated from the house by a passage, used as a school-room, but within the curtilage, was an outhouse within 9 Geo. 1, c. 22, s. 1, although not of the ordinary description of outhouses. Rex v. Winter, R. & R. C. C. 295.

A common gaol was a house within 9 Geo. 1, c. 22. Rex v. Donnevan, 2 W. Bl. 682; 1 Leach, C. C. 69; 2 East, P. C. 1021. But see now Reg. v. Connor, 2 Cox. C. C. 65—Parke.

A building had been built for an oven to bake bricks, but afterwards was roofed, and a door put into it. In this place the prosecutor kept a cow; adjoining to it, but not under the same roof, was a lean-to, in

which another person kept a horse. Neither the prosecutor nor the person of whom he rented this building, had any house or farm-yard near it, nor did any wall connect it with any dwelling-house; the nearest dwelling being one hundred yards off, and not belonging to either the prosecutor or his landlord:—Held, that the building was neither a stable or an out-house, and that, if a person set it on fire (the lean-to not being burnt), he was not indictable for arson. Rex v. Haughton, 5 C. & P. 555—Taunton.

An open building in a field at a distance from and out of sight of the owner's house, though boarded round and covered in, was not an out-house within 7 & 8 Geo. 4, c. 30, s. 2. Rex v. Ellison, 1 M. C. C. 336.

Setting fire to paper only in a drying loft belonging to a paper-mill, no part of which was burnt, was not setting fire to an out-house within 9 Geo. 1, c. 22. Rex v. Taylor, 1 Leach, C. C. 49; 2 East, P. C. 1820.

An open shed in a farm-yard, composed of upright posts supporting pieces of wood laid across them, and covered with straw as a roof, was an out-house within 7 & 8 Geo. 4, c. 30, s. 2. Rex v. Stallion, 1 M. C. C. 398.

A cart hovel, consisting of a stubble roof, supported by uprights, in a field at a distance from other buildings, was not an out-house within 7 & 8 Geo. 4, c. 30, s. 2. Rex v. Parrott, 6 C. & P. 402—Vaughan.

# 6. Railway Stations and Buildings.

By 24 & 25 Vict. c. 97, s. 4, "whosoever shall unlawfully and "maliciously set fire to any station, "engine-house, warehouse, or other building belonging or appertain-"ing to any railway, port, dock, or "harbor, or to any canal or other "navigation, shall be guilty of fel-"ony, and, being convicted thereof, "shall be liable, at the discretion of

"the court, to be kept in penal "servitude for life, or for any term "not less that five years (27 & 28 "Vict. c. 47); or to be imprisoned "for any term not exceeding two "years, with or without hard labour, "and, if a male under sixteen, with "or without whipping." (Former provision, 14 & 15 Vict. c. 19, s. 8.)

## 7. Public Buildings.

By s. 5, "whosoever shall unlaw-"fully and maliciously set fire to "any building, other than such as "are in this act before mentioned, "belonging to the Queen, or to any "county, riding, division, city, bor-"ough, poor-law union, parish, or "place, or belonging to any uni-"versity, or college, or hall of any "university, or to any inn of court, "or devoted or dedicated to public "use or ornament, or erected or "maintained by public subscription "or contribution, shall be guilty of "felony, and, being convicted there-"of, shall be liable, at the discretion "of the court, to be kept in penal "servitude for life, or for any term "not less than five years (27 & 28 "Vict. c. 47); or to be imprisoned "for any term not exceeding two "years, with or without hard labour, "and, if a male under sixteen, with "or without whipping."

# 8. Other Buildings.

By 24 & 25 Vict. c. 97, s. 6, "whosoever shall unlawfully and "maliciously set fire to any build-"ing other than such as are in this "act before mentioned, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding fourteen years, "and not less than five years (27 & "28 Vict. c. 47); or to be impris-"oned for any term not exceeding "two years, with or without hard "labour, and, if a male under six-"teen, with or without whipping."

Property in Buildings.

By s. 7, "whosoever shall unlaw-"fully and maliciously set fire to "any matter or thing, being in, "against, or under any building, "under such circumstances that if "the building were thereby set fire "to, the offence would amount to "felony, shall be guilty of felony, "and, being convicted thereof, shall "be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "fourteen and not less than five "years (27 & 28 Vict. c. 47); or to "be imprisoned for any term not "exceeding two years, with or with-"out hard labour, and, if a male un-"der sixteen, with or without whip-"ping. (Former provisions, 7 & 8 Vict. c. 62, s. 2, and 14 & 15 Vict. c. 19, s. 8.)

A person who maliciously set fire to his own goods in his own house with intent, by burning the goods, to defraud an insurance company, but did not set fire to the house, might be convicted of felony under an indictment framed upon 14 & 15 Vict. c. 19, s. 8, and 7 Will. 4 & 1 Vict. c. 89, s. 3. Reg. v. Lyons, Bell, C. C. 38; 5 Jur., N. S. 23; 28 L. J., M. C. 33; 7 W. R. 58; 32 L. T. 150; 8 Cox, C. C. 84.

By s. 8, "whosoever shall unlaw-"fully and maliciously, by any overt "act, attempt to set fire to any "building, or any matter or thing "in the last preceding section men-"tioned, under such circumstances "that if the same were thereby set "fire to, the offender would be "guilty of felony, shall be guilty "of felony, and being convicted "thereof shall be liable, at the dis-"cretion of the court, to be kept in "penal servitude for any term not "exceeding fourteen and not less "than five years (27 & 28 Vict. c. "47); or to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment, and, if a male under six-

"teen, with or without whipping." (Former provision, 7 & 8 Vict. c. 25, s. 7.)

Wilfully throwing a light into a postoffice letter-box in a house with the intention of burning the letters, but not the house, is not a felony within 24 & 25 Vict. c. 97, ss. 7, 8. Reg. v. Batstone, 10 Cox, C. C. 20—Williams.

# 10. By Gunpowder and Explosive Substances.

By 24 & 25 Vict. c. 97, s. 9, "whosoever shall unlawfully and "maliciously, by the explosion of "gunpowder or other explosive sub-"stance, destroy, throw down, or "damage the whole or any part of "any dwelling-house, any person "being therein, or of any building "whereby the life of any person "shall be endangered, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than five "years (27 & 28 Vict. c. 47); or to "be imprisoned for any term not "exceeding two years, with or with-"out hard labour, and with or with-"out solitary confinement, and, if a "male under sixteen, with or with-"out whipping." (Previous provission, 9 & 10 Vict. c. 25, ss. 1, 2.)

This enactment was intended to apply to malicious injuries to houses by throwing explosive substances against or into them, with intent to destroy them or injure the immates, and not to cases of wanton mischief or assault. Reg. v. Brown, 3 F. & F. 821—Martin.

By s. 10, "whosoever shall un-"lawfully and maliciously place "or throw in, into, upon, under, "against, or near any building, any "gunpowder or other explosive sub-"stance, with intent to destroy or "damage any building, or any en-"gine, machinery, working tools, "fixtures, goods, or chattels, shall, "whether or not any explosion take "place, and whether or not any "damage be caused, be guilty of "felony, and, being convicted there"of, shall be liable, at the discretion "of the court, to be kept in penal "servitude for any term not exceed"ing fourteen and not less than five "years (27 & 28 Vict. c. 47); or to "exceeding two years, with or with"out hard labour, and with or with"out solitary confinement, and, if a "male under sixteen, with or with"out whipping." (Previous provision, 9 & 10 Vict. c. 25, s. 6.)

In order to support an indictment under 24 & 25 Vict. c. 97, s. 10, for throwing gunpowder against a house with intent to damage, it is not enough to show simply that gunpowder or other explosive substance was thrown against the house; but it must also be shown that the substance was in a condition to explode at the time it was thrown although no actual explosion should result. Reg. v. Sheppard, 19 L T., N. S. 19; 11 Cox, C. C. 302—Kelly.

## 11. Crops, Stacks, or Woods.

By 24 & 25 Vict. c. 97, s. 16, "whosoever shall unlawfully and " maliciously set fire to any crop of "hay, grass, corn, grain, or pulse, "or of any cultivated vegetable " produce, whether standing or cut "down, or to any part of any wood, "coppice, or plantation of trees, or "to any heath, gorse, furze, or fern, "wheresoever the same may be "growing, shall be guilty of fel-"ony, and, being convicted thereof, "shall be liable, at the discretion of "the court, to be kept in penal serv-"itude for any term not exceeding "fourteen years and not less than "five years (27 & 28 Vict. c. 47); "or to be imprisoned for any term "not exceeding two years, with or "without hard labour, and with or "without solitary confinement, and, "if a male under sixteen, with or "without whipping." (Previous |

provision, 7 & 8 Geo. 4, c. 30, s. 17.) By s. 17, "whosoever shall un-"lawfully and maliciously set fire "to any stack of corn, grain, pulse, "tares, hay, straw, haulm, stubble, "or of any cultivated vegetable "produce, or of furze, gorse, heath, "fern, turf, peat, coals, charcoal, "wood, or bark, or to any steer of "wood or bark, shall be guilty of "felony, and, being convicted there-"of, shall be liable, at the discre-"tion of the court, to be kept in " penal servitude for life, or for any "term not less than five years (27-"& 28 Vict. c. 47); or to be im-"prisoned for any term not exceed-"ing two years, with or without "hard labour, and with or without "solitary confinement, and, if a "male under sixteen, with or with-"out whipping." (Previous enactment, 7 Will. 4 & 1 Vict. c. 89, s. 10.)

By s. 18, "whosoever shall un-"lawfully and maliciously, by any "overt act, attempt to set fire to "any such matter or thing as in "either of the last two preceding "sections mentioned, under such "circumstances that if the same "were thereby set fire to, the of-"fender would be, under either of "such sections, guilty of felony, "shall be guilty of felony, and, be-"ing convicted thereof, shall be lia-"ble, at the discretion of the court, "to be kept in penal servitude for " any term not exceeding seven and "not less than five years (27 & 28 "Vict. c. 47); or to be imprisoned "for any term not exceeding two " years, with or without hard labour, "and with or without solitary con-"finement, and, if a male under "sixteen, with or without whip-"ping." (Former statute, 9 & 10 Vict. c. 25, s. 7.)

Setting fire to a parcel of unthreshed wheat was not a felony within 9 Geo. 1, c. 22. Rex v. Judd, 2 T. R. 255; 1 Leach, C. C. 484; 2 East, P. C. 1018.

Sedge and rushes were not straw

within 7 Will. 4 & 1 Vict. c. 89, which was confined to the straw of wheat, oats, barley and rye. Reg. v. Baldock, 2 Cox, C. C. 55.

A. and B. were convicted for unlawfully and maliciously setting fire to a stack of grain. The stack was of the flax plant, with the seed or grain in it, and the jury found that the flax seed is a grain:—Held, that the stack was a stack of grain within 7 Will. 4 & 1 Vict. c. 89, s. 10. Reg. v. Spencer, Dears. & B. C. C. 131; 2 Jur., N. S. 1212; 26 L. J., M. C. 16; 7 Cox, C. C. 189.

It was a sufficient overt act to render a person liable to be found guilty of attempting to set fire to a stack, under 9 & 10 Vict. c. 25, s. 7, if he went to the stack with the intention of setting fire to it and lighted a lucifer match for that purpose, but abandoned the attempt because he found that he was being watched. Reg. v. Taylor, 1 F. & F. 511—Pollock.

A stack, of which the lower part consisted of cole-seed straw, and the upper part of wheat stubble, was not a stack of straw; and the setting it on fire was not therefore a capital offense within 7 & 8 Geo. 4, c. 29, s. 17. Rex v. Tottenham, 7 C. & P. 237—Denman and Gaselee.

Setting fire to a score of faggots which were piled one upon another in a loft, which was made by means of a temporary floor put over an archway roofed in between two houses, and under which carts could go, was not setting fire to a stack of wood within 7 & 8 Geo. 4, c. 30, s. 17. Rex v. Aris, 6 C. & P. 348—Park.

A count charged an attempt to set fire to a stack of haulm. It was proved that some haulm had been carted from a field, and stacked in a building originally intended for a stable, but afterwards divided into three parts by a wall, which reached only to the eaves, one part was used as a stable, and the part fired contained the haulm and a lot of tiles:

—Held, that the count was sufficient, inasmuch as it is not necessary to the character of a stack that it should be erected out of doors. Reg. v. Munson, 2 Cox, C. C. 186—Coleridge.

A. and B. were charged with setting fire to a wood. They set fire to a summer-house which was in the wood, and from the summer-house the fire was communicated to the wood:—Held, that they might be convicted on this indictment. Reg. v. Price, 9 C. & P. 729—Gurney.

## 12. Coal and Other Mines.

By 24 & 25 Vict. c. 97, s. 26, "whosoever shall unlawfully and "maliciously set fire to any mine "of coal, cannel coal, anthracite, "or other mineral fuel, shall be "guilty of felony, and being con-"victed thereof shall be liable, at "the discretion of the court, to be "kept in penal servitude for life or "for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not "exceeding two years, with or with-"out hard labour, and with or with-"out solitary confinement, and, if "a male under sixteen, with or "without whipping." (Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 9.)

By s. 27, "whosoever shall un-"lawfully and maliciously by any "overt act attempt to set fire to "any mine, under such circum-"stances that if the mine were "thereby set fire to, the offender "would be guilty of felony, shall "be guilty of felony, and being " convicted thereof shall be liable, "at the discretion of the court, to " be kept in penal servitude for any "term not exceeding fourteen and "not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two " years, with or without hard labour, "and with or without solitary con-"finement, and, if a male under

"sixteen, with or without whip"ping." (Former provision, 9 & 10
Vict c. 25, s. 7.)

### 13. Parties Indictable.

A wife was not indictable under 7 & 8 Geo. 4, c. 30, s. 2, for setting fire to her husband's house with intent to injure him; as it is essential that there should be an intent to injure or defraud some third person, and not one identified with 'herself. Rex v. March, 1 M. C. C. 182.

If A. counsels and encourages B. to set fire to a malthouse, and B. attempts to set it on fire, both may be jointly indicted as principals for the misdemeanor of attempting to set the malthouse on fire, although A. was not present at the time of the attempt. Reg. v. Clayton, 1 C. & K. 128—Williams.

On an indictment for maliciously setting fire to a building, it is not necessary to prove actual ill-will in the prisoner towards the owner; and in order to justify a jury in acquitting a prisoner on the ground of insanity, they must believe that he did not know right from wrong; but if they find that the prisoner, when he did the act, was in a state of mind that he was not conscious that the effect of it would be to injure any other person, that will amount to a general verdict of not guilty. Reg. v. Davies, 1 F. & F. 69—Crompton.

#### 14. Indictment.

By 24 & 25 Vict. c. 97, s. 60, "it "shall be sufficient in any indict"ment for any offence against the "act, where it shall be necessary to "allege an intent to injure or de"fraud, to allege that the party ac"cused did the act with intent to "injure or defraud, as the case may be, without alleging an intent to "injure or defraud any particular "person, and on the trial of any such "offence, it shall not be necessary to

"prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to injure or defraud, as the case may be."

It must appear upon the face of an indictment for arson that the house was that of another; and it must state whose house, and with that the proof should agree. Rex v. Rickman, 2 East, P. C. 1034. And see Rex v. Glandfield, 2 East, P. C. 1034.

An indictment for setting fire to an out-house was good, though it might have, in point of law, formed part of the dwelling-house, the burning of which was arson at common law. Rex v. North, 2 East, P. C. 1021.

A house, in part of which a man lives, and other parts of which he lets to lodgers, may be described, in an indictment for setting fire to it, as his house, though he has taken the benefit of the insolvent debtors' act, and executed an assignment including the house, if the assignee has not taken possession; at least, no objection can be made, if in other counts it is stated as the house of the assignee, and in others of the lodger whose room was set fire to. Rex v. Ball, 1 M. C. C. 30.

A prisoner was convicted on an indictment for setting fire with intent to injure A. B. The property fired belonged to A. B. The jury found the intent to injure C. D.:—Conviction held good. Rex v. Newill, 1 M. C. C. 458.

So an indictment under 7 & 8 Geo. 4, c. 30, s. 17, for setting fire to a stack of straw, was good, without stating any intent to injure. *Ib*.

It was not necessary to aver in an indictment on 9 Geo. 1, c. 22, for setting fire to a hay-stack, that the stack "was thereby burnt." Rex v. Salmon, R. & R. C. C. 26.

In an indictment on 9 Geo. 1, c. 22, for setting fire to a hay-stack, it was no answer to the charge that

the prisoner had no malice or spite to the owner of the stack. *Ib*.

An indictment for setting fire to a barge, the property of another, ought to contain an averment that it was done with an intent to injure the owner. Rex v. Smith, 4 C. & P. 569—Gaselee and Alderson. Sed quære, see Rex v. Newill, 1 M. C. C. 458, and 24 & 25 Vict. c. 97, s. 60.

On an indictment for setting fire to a mill, with intent to injure the occupiers thereof:—Held, that an injury to the mill being the necessary consequence of setting fire to it, the intent to injure might be inferred; for a man must be supposed to intend the necessary consequence of his own act. Rew v. Farrington, R. & R. C. C. 207.

An indictment on 7 & 8 Geo. 4, c. 30, ss. 2 and 17, for setting fire to a barn and a stack of straw, charged the offences to have been committed "feloniously, voluntarily and maliciously," instead of "feloniously, unlawfully and maliciously," was bad. Rex v. Reader, 4 C. & P. 245; 1 M. C. C. 239.

The prisoners had set fire to a stack of stubble (which, in Cambridgeshire, is called haulm); they were indicted on a first indictment for setting fire to a stack of straw:

—Held, that this was not straw. And, on their being again indicted for setting fire to a stack of straw called haulm, the judge intimated that to convict upon such a count would not be safe; and the verdict, in consequence, was taken upon other counts, charging the setting fire to a barn and a wheat stack. Ib.

On an indictment for setting fire to a stack of beans, a mistake as to the name of the place where the offence was committed is immaterial; the charge is transitory, not local. Rex y. Woodward, 1 M. C. C. 323.

Upon a statute which made it capital to set fire to a stack of pulse, it was sufficient to state that the prisoner set fire to a stack of beans.

The judges will take notice that beans are pulse. *Ib*.

An indictment on 7 & 8 Geo. 4, c. 30, s. 17, charged a party with setting fire to a stack of barley, of the value of 100l., of R. P. W. was good, although the words of the statute creating the offence were "any stack of corn or grain." Rew v. Swatkins, 4 C. & P. 548—Patteson.

Held, also, that if the indictment stated "that the prisoner felonious ly, unlawfully and maliciously did set fire to a certain stack of barley, of the value of 100l., of R. P. W., then and there being," this is sufficient, without stating that the prisoner feloniously, unlawfully and maliciously did then and there set fire to the stack. Ib.

#### 15. Evidence.

Notice to produce Policy. —On an indictment for arson on the prosecution of an insurance company, their books are not evidence of the insurance, without notice to produce the policy. Rex v. Doran, 1 Esp. 127—Kenyon.

A prisoner tried at the assizes for arson, on Wednesday, the 20th of March, was on Monday, the 18th, served at the prison with a notice to produce a policy of insurance. The commission day was Friday, the 15th, and the prisoner's home was ten miles from the assize town.—Held, that the notice was served too late. Rex v. Ellicombe, 5 C. & P. 522; 1 M. & Rob. 260—Littledale.

Notice to produce policies of insurance, served on the prisoner's attorney on Tuesday evening, the prisoner then in Maidstone, the policies being twenty miles off, and the trial taking place on Thursday, is sufficient. Reg. v. Barker, 1 F. & F. 326—Bramwell.

Upon an indictment for arson, with intent to defraud an insurance company, the nature of the proceedings does not give notice to the pris-

oner to produce the policy, so as to dispense with actual notice to produce it. *Reg.* v. *Kitson*, Dears. C. C. 187; 17 Jur. 422; 22 L. J., M. C. 118.

Commission of Act—Motives and Intent.]—A. was indicted for wilfully setting fire to a rick by firing a gun close to it on the 29th of March: evidence that the rick was also on fire on the 28th of March, and that A. was then close to it, having a gun in his hand, is receivable to shew that the fire on the 29th was not accidental. Reg. v. Dossett, 2 C. & K. 306; 2 Cox, C. C. 243—Maule.

On an indictment for arson in setting fire to a rick, the property of A., evidence may be given of the prisoner's presence and demeanor at fires of other ricks, the property respectively of B. and C., occurring the same night, although those fires are the subject of other indictments against the prisoner, such evidence being important to explain his movements and general conduct before and after the fire of A.'s rick: but evidence is not admissible of threats, of statements, or of particular acts, pointing alone to other indictments, and not tending to implicate or explain the conduct of the prisoner in reference to that fire. Reg. v. Taylor, 5 Cox, C. C. 138-Patteson.

Under an indictment for arson, where the prisoner is charged with wilfully setting fire to her master's house, the previous and abortive attempts to set fire to different portions of the same premises are admissible, though there is no evidence to connect the prisoner with either of them. Reg. v. Bailey, 2 Cox, C. C. 311.

Upon an indictment for arson, with intent to injure the person in occupation of the premises, the prisoner may be found guilty, although his intent is proved to have been to obtain a reward for giving the earliest intimation of a fire at the en-

gine station. Reg. v. Regan, 4 Cox, C. C. 335.

Upon such an indictment it is not competent for the prosecutors to shew that other fires, of which notice was given by the prisoner, were of a similar nature to the one in question, and different from those of which notice was given by other parties. *Ib*.

On an indictment for arson, one count laying an intent to defraud, and it being opened for the prosecution that the motive might have been to realise the money insured by the prisoner upon her goods; evidence was received that she was in easy circumstances, with a view to shew that she was at all events under no pecuniary temptation to commit such an act. Reg. v. Grant, 4 F. & F. 322—Pollock.

On a charge of arson (the case turning on identity) evidence was rejected that, a few days previously to the fire, another building of the prosecutor's was found on fire, and the prisoner was seen standing by, with a demeanor which shewed indifference or gratification. Reg. v. Harris, 4 F. & F. 342—Willes.

## VI. ASSAULT AND BATTERY.

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### 1. Common.

To support a charge of assault, such an assault must be shewn as could not be justified if an action was brought for it, and leave and licence pleaded. Reg. v. Meredith,

8 C. & P. 589—Abinger.

If a person presents a pistol, purporting to be a loaded pistol, at another, and so near as to have been dangerous to life if the pistol had gone off; semble, that this is an assault, even though the pistol was, in fact, not loaded. Reg. v. St. George, 9 C. & P. 483—Parke. But see Blake v. Barnard, 9 C. & P. 626—Abinger.

A. presented a loaded pistol at B., but was prevented from pulling the trigger:—Held, that A. could be properly convicted of this assault, on an indictment for feloniously attempting to discharge load-

ed arms at B. Ib.

Making a female patient strip naked, under the pretence that the defendant, a medical man, cannot otherwise judge of her illness, is, if he himself takes off her clothes, an assault. Rex v. Rosinski, 1 M. C. C. 19.

If a schoolmaster takes indecent liberties with a female scholar, without her consent, though she does not resist, he is liable to be punished as for a common assault. Rex v.

Nichol, R. & R. C. C. 130.

If parish officers cut off the hair of a pauper in the poor-house by force, and against the will of such pauper, this is an assault; and if it be done as matter of degradation, and not with a view to cleanliness, that will be an aggravation, and go to increase the damages. Forde v. Skinner, 4 C. & P. 239—Bayley.

If one has an idiot brother who being an assenting party, but that is bed-ridden in his house, and from her tender years she did not

keeps him in a dark room without sufficient warmth or clothing, this will not be an assault or an imprisonment, nor will proof of this support an indictment for an assault or an imprisonment. Rex v. Smith, 2 C. & P. 449—Burrough.

B. was indicted, with three others, for an assault with intent to do some grievous bodily harm. It was proved that he, with the other prisoners, had assaulted the prosecutor, and afterwards they had returned together and picked up some stones. Then B. withdrew, and the other prisoners threw the stones and wounded the prosecutor. The jury found the three prisoners who threw the stones guilty of the felony, and B. guilty only of a common assault: -Held, that B. was rightly convicted. Reg. v. Phillips, 3 Cox, C. C. 225.

A. was advancing in a threatening attitude, with an intention to strike B., so that his blow would have almost immediately reached B., if he had not been stopped:—Held, that it was an assault in point of law, though, at the particular moment when A. was stopped, he was not near enough for his blow to take effect. Stephens v. Myers, 4 C. & P. 349—Tindal.

If one man strikes another a blow, that other has a right to defend himself, and strike a blow in his defence, but he has no right to revenge himself; and if, when all the danger is past, he strikes a blow not necessary, he commits an assault and a battery. Reg. v. Driscoll, Car. & M. 214—Coleridge.

If two go out to strike one another, and do so, it is an assault in both, and it is quite immaterial who strikes the first blow. *Reg.* v. *Lewis*, 1 C. & K. 419—Coleridge.

Three boys under fourteen had connection with a girl, aged nine; they were indicted for an assault; the jury found them guilty, the child being an assenting party, but that from her tender years she did not

know what she was about:—Held, that this was not an assault, and that the conviction was wrong. Reg. v. Read, 2 C. &. K. 957; 1 Den. C. C. 377; T. & M. 52; 3 New Sess. Cas. 405; 13 Jur. 68; 18 L. J., M. C. 88.

It is an assault to point a loaded pistol at any one; but not an assault to point a pistol at another which is proved not to be so loaded as to be able to be discharged. Req. v. James, 1 C. & K. 530—Tindal.

Attempting to carnally know and abuse a girl between the ages of ten and twelve is not an assault, if the girl consents to all that is done, but is a misdemeanor. Reg. v. Martin, 9 C. & P. 213; 2 M. C. C. 123; S. P., Reg. v. Johnson, L. & C.

632; 10 Cox, C. C. 114.

The person making such attempt, with the consent of the girl, is not indictable for an assault, but is indictable for the misdemeanor of attempting to commit the misdemeanor of carnally knowing and abusing her. *Ib.*; *S. P.*, *Reg.* v. *Neale*, 35 L. J., M. C. 60.

Where a medical practitioner had sexual connection with a female patient of the age of fourteen, who had for some time been receiving medical treatment from him:-Held, that he was guilty of an assault, the jury having found that she was ignorant of the nature of his act, and made no resistance, solely from a bona fide belief that he was (as he represented) treating her medically, with a view to her cure. Reg v. Case, T. & M. 318; 1 Den. Č. C. 580; 4 New Sess. Cas. 347; 14 Jur. 489; 19 L. J., M. C. 174: 4 Cox. C. C. 220.

Where a master of a union inflicts personal chastisement on a female pauper in an indecent manner, he is guilty of an assault, even though the extent of the correction is within the limits of moderation. Reg. v. Miles, 6 Jur. 243—Gurney.

not knowing that the cantharides was in the rum, and became ill:-Held, that A. was neither indictable for an assault, nor for a misdemeanor at common law. Reg. v. Hanson, 2 C. & K. 912 - Williams; S. P., Reg. v. Walkden, 1 Cox, C. C. 282; Reg. v. Dilworth, 2 M. & Rob. 531.

C. was delivered of a child at the house at which A. and B. resided, they telling her that the child was to be taken to an institution to be nursed. A. & B. took the child, and put it into a bag, and hung it on some park-palings at the side of a foot-path, and there left it:— Held, that this was an assault on the child. Reg. v. March, 1 C. & K. 496—Tindal.

If a party is turning towards the wall in the street, at night, for a particular occasion, a watchman is not justified in collaring him to prevent him so doing. Booth v. Hanley, 2 C. & P. 288. See 2 & 3

Vict. c. 47.

A party struck at may strike again, to prevent a repetition. Anon., 2 Lewin, C. C. 48—Parke.

A person may, under particular circumstances, justify laying hands on another in order to serve him with process. Harrison v. Hodgson, 10 B. & C. 445; 5 M. & R. 392.

A police constable is not justified under 10 Geo. 4, c. 44, s. 7, in laying hold of, pushing along the highway, and ordering to be off, a person found by him conversing in a crowd with another, merely because the person with whom he happens to be conversing is known to be a reputed thief. Stocken v. Carter, 4 C. & P. 477 — Gaselee. See 2 & 3 Vict. c. 47.

Upon an indictment under 24 & 25 Vict. c. 100, s. 20, for unlawfully and maliciously wounding or inflicting grievous bodily harm, a verdict for a common assault may be return-A. put cantharides into rum, and | ed. Reg. v. Taylor, Reg. v. Conwell, gave it to B. to drink; B. drank it, 20 L. T., N. S. 402; 17 W. R. 623; 11 Cox, C. C. 261; 4 L. R., C. C. 194.

On an indictment for a felonious assault, the jury being unable to agree as to the felonious intent, were discharged by arrangement, in order that the prisoner might plead guilty to a common assault with a view to Reg. v. Roxburgh, compensation. 12 Cox, C. C. 8.

## On Clergymen or Ministers of Religion.

By 24 & 25 Vict. c. 100, s. 36, "whosoever shall, by threats or "force, obstruct or prevent, or en-"deavor to obstruct or prevent, any "clergyman or other minister in or "from celebrating divine service, or " otherwise officiating in any church, "chapel, meeting-house or other "place of divine worship, or in or from the performance of his duty "in the lawful burial of the dead "in any churchyard or other burial-"place, or shall strike or offer any "violence to, or shall, upon any "civil process, or under the pre-"tence of executing any civil pro-"cess, arrest any clergyman or "other minister who is engaged in, "or to the knowledge of the offend-"er is about to engage in, any of "the rights or duties in this section "aforesaid, or who to the knowl-"edge of the offender shall be go-"ing to perform the same, or re-"turning from the performance" thereof, shall be guilty of a mis-"demeanor, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be impris-"oned for any term not exceeding "two years, with or without hard "labour."

An indictment charging that the defendant, in a churchyard, interrupted and obstructed W. C., clerk, in reading the order for the burial of the dead and interring a corpse, and unlawfully, and by threats and menaces, hindered the burial of the corpse, is bad in arrest of judgment, for not averring that W. C. "of an assault and battery on

was a clerk in holy orders, and lawfully acting as such in the burial of the corpse, and for not setting out the particular threats and menaces Rex v. Cheere, 7 D. & R. 461; 4 B. & C. 902.

## 3. On Magistrates or other Persons in Preserving Wrecks.

By 24 & 25 Vict. c. 100, s. 37, "whosoever shall assault and strike "or wound any magistrate, officer "or other person whatsoever law-"fully authorized, in or on account "of the exercise of his duty in or "concerning the preservation of any "vessel in distress, or of any vessel, "goods or effects wrecked, strand-"ed or cast on shore, or lying under "water, shall be guilty of a mis-"demeanor, and, being convicted "thereof, shall be liable, at the dis-" cretion of the court, to be kept in "penal servitude for any term not "exceeding seven years, and not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour."

## 4. On Peace and other Officers in Execution of Duty.

By 24 & 25 Vict. c. 100, s. 38, "whosoever shall assault any per-"son with intent to commit felony, " or shall assault, resist or wilfully "obstruct any peace officer in the "due execution of his duty, or any "person acting in aid of such offi-"cer, or shall assault any person "with intent to resist or prevent "the lawful apprehension or de-"tainer of himself or of any other "person for any offence, shall be "guilty of a misdemeanor, and, be-"ing convicted thereof, shall be lia-"ble, at the discretion of the court, "to be imprisoned for any term not " exceeding two years, with or with-" out hard labour."

By 32 & 33 Vict. c. 99, s. 12, "where any person is convicted

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"any constable, or police, or peace officer when in the execution of his duty, such person shall on summary conviction before two or more justices, or one stip endiary magistrate, be liable either to pay a penalty not exceeding 201., and in default of payment to be imprisoned for a term not exceeding six months, or, in the discretion of the court, to be imprisoned for any term not exceeding six months, with or without hard labour."

A constable and his assistants who take a bailiff into custody during an affray to rescue his prisoner, in which the bailiff struck one of the assailants, and the prisoner was rescued, are guilty of an assault and a rescue, as the bailiff was authorized by his warrant. *Anon.*, 1 East, P. C. 305—Heath.

One of the marshals of the city of London, whose duty it was, on the day of a public meeting at Guildhall, to see that a passage was kept for the transit to their carriages of the members of the corporation and others, directed a person in the front of a crowd at the entrance to stand back, and, on being told by him that he could not for those behind him, struck him immediately on the face, saying that he would make him:—Held, that in so doing the marshal exceeded his authority, and that he should have confined himself to the use of pressure, and should have waited a short time to afford an opportunity for removing the party in a more peaceable way. Imason v. Cope, 5 C. & P. 193-Tindal.

An innkeeper, having an escaped felon in his house, to the policemen, who had remarked, "You scoundrel, how dare you harbour a felon?" said "You had better go and find him;" but he did nothing, and the policemen went up stairs and saw the felon make his escape from the window, is no evidence of an obstructing of the felon's apprehen-

sion. Reg. v. Green, 8 Cox, C. C. 441—Blackburn.

A. was indicted for assaulting a policeman in the execution of his duty. It appeared that the policeman had gone into a public-house where the defendant was having high words with the landlady. The defendant tried to go into a room in the house in which a guest was, and the policeman, without being desired to do so, collared him, and prevented him from going into the room, and A. struck the policeman, and several blows passed on both sides:—Held, that if the jury was satisfied that no breach of the peace was likely to be committed by the defendant on the guest in the room, it was no part of the policeman's duty to prevent the defendant from entering it; but, assuming that to be so, if the defendant used more violence than was necessary to repel the assault committed on him by the policeman, the defendant would be liable to be convicted of a common assault. Reg. v. Mabel, 9 C. & P. 474—Parke.

A constable (out of the limits of the Metropolitan Acts) when he is clearing a public-house, is not acting in the execution of his durunless there is a nuisance or a disturbance of the peace. Reg. v. Prebble, 1 F. & F. 325—Bramwell.

A. committed an assault upon a constable, who, two hours afterwards, having obtained assistance, and when there was no danger of any renewal of the assault, attempted to apprehend him, and was wounded in the attempt: — Held, that his apprehension at that time was unlawful; and that he was improperly convicted of wounding the constable with intent to prevent his lawful apprehension. Reg. v. Walker, 6 Cox, C. C. 371; 23 L. J., M. C. 123.

the policemen went up stairs and saw the felon make his escape from the window, is no evidence of an obstructing of the felon's apprehen-

wife's head, and heard him say at [ the same time, "If it was not for the policeman outside, I would split your head open." In about twenty minutes' time the defendant left his house, after saying that he would leave his wife altogether, and was taken into custody by the constable, who had no warrant, when he had proceeded a short distance in the direction of his father's residence; he resisted the constable, and was tried and convicted upon an indictment charging him with assaulting the constable whilst in the execution of his duty:-Held, that the constable was justified in apprehending the defendant, and that the conviction therefore was right. Reg. v. Light, Dears. & B. C. C. 332; 7 Cox, C. C. 389; 3 Jur., N. S. 1130; 27 L. J., M. C. 1.

An indictment against a person for refusing to aid and assist a constable in the execution of his duty, and prevent an assault made upon him by prisoners in his custody on a charge of felony, with intent to resist their lawful apprehension, is sufficient, without stating how the apprehension became lawful; and it is enough if it states a refusal to assist, without the further allegation that he did not, in fact, aid and assist. Reg. v. Sherlock, 10 Cox, C. C. 170; 1 L. R., C. C. 20; 12 Jur., N. S. 126; 35 L. J., M. C. 92; 14 W. R. 288; 13 L. T., N. S. 623

D. was indicted for assaulting a sub-bailiff of a county court. The latter was endeavouring to apprehend D. under a warrant issued out of the county court, when the assault was committed, but not with more violence than was necessary to prevent the apprehension:—Held, that the production of the county court warrant at the trial was a sufficient justification of the act of the bailiff, without proof of the previous proceedings in the county court. Reg. v. Davies, 8 Cox, C. C.

486; L. & C. 64; 7 Jur., N. S. 1040; 4 L. T., N. S. 559.

An excise officer gave the defendant a search warrant to look at, who then refused to deliver it up, and a scuffle ensued: on an indictment for an assault, the question left to the jury was, whether the officer used more force than was necessary to recover possession of the warrant. Rex v. Milton, M. & M. 107; S. C., nom. Rex v. Mitton, 3 C. & P. 31—Tenterden.

The defendant was convicted in a penalty with costs, or to be imprisoned seven days, the penalty not having been paid, a warrant was issued, under 11 & 12 Vict. c. 43, s. 25, for his apprehension, addressed "To the constable of G." It was given to a county policeman to execute. While he was attempting to apprehend the defendant, the defendant resisted and wounded the constable: — Held, that a county policeman had no authority to execute it, it being addressed to the parish constable; and that the apprehension was therefore illegal. Reg. v. Sanders, 10 Cox, C. C. 445; 36 L. J., M. C. 87; 1 L. R., C. C. 75; 16 L. T., N. S. 331; 15 W. R. 752.

To support a charge of assault on a constable in the execution of his duty, it is not necessary that the defendant should know that he was a constable then in the execution of his duty; it is sufficient that the constable should have been actually in the execution of his duty and then assaulted. Reg. v. Forbes, 10 Cox, C. C. 362—Russell Gurney, Recorder.

The prisoner assaulted a police constable in the execution of his duty. The constable went for assistance, and after an interval of an hour returned with three other constables, when he found that the prisoner had retired into his house, the door of which was closed and fastened; after another interval of

fifteen minutes the constables forced open the door, entered, and arrested the prisoner, who wounded one of them in resisting his apprehension:
—Held, that as there was no danger of any renewal of the original assault, and as the facts of the case did not constitute a fresh pursuit, the arrest was illegal. Reg. v. Marsden, 1 L. R., C. C. 131; 37 L. J., M. C. 80; 18 L. T., N. S. 298; 16 W. R. 711; 11 Cox, C. C. 90.

A police constable though not bound in the execution of his duty to assist a publican in ejecting an intruder from his house, yet in doing so acts lawfully; and resistance to the constable renders the party liable to a conviction for an assault. Reg. v. Roxburgh, 12 Cox, C. C. 8.

5. On Seamen, Keelmen or Casters. By 24 & 25 Viet. c. 100, s. 40, "whosoever shall unlawfully and "with force hinder or prevent any "seaman, keelman or caster from "working at or exercising his law-"ful trade, business or occupation, "or shall beat or use any violence "to any such person with intent to "hinder or prevent him from work-"ing at or exercising the same, "shall, on conviction thereof be-"fore two justices of the peace, be "liable to be imprisoned and kept "to hard labour in the common "gaol or house of correction for "any term not exceeding three "months: provided that no person "who shall be punished for any such "offence by reason of this section "shall be punished for the same of-"fence by virtue of any other law "whatsoever."

# 6. On Obstructing Sale of Grain, or its Free Passage.

By 24 & 25 Vict. c. 100, s. 39, "whosoever shall beat or use any "violence or threat of violence to "any person, with intent to deter "or hinder him from buying, sell-"ing or otherwise disposing of, or "to compel him to buy, sell or oth-

"erwise dispose of any wheat or "other grain, flour, meal, malt or "potatoes, in any market or other "place, or shall beat or use any "such violence or threat to any "person having the care or charge "of any wheat or other grain, flour, "meal, malt or potatoes, whilst on "the way to or from any city, "market town or other place, with "intent to stop the conveyance of "the same, shall, on conviction "thereof before two justices of the "peace, be liable to be imprisoned "and kept to hard labour in the "common gaol or house of correc-"tion for any term not exceeding "three months: provided that no " person who shall be punished for "any such offence by virtue of this "section shall be punished for the "same offence by virtue of any "other law whatsoever."

# 7. Arising from Trade Combinations or Conspiracies.

By 24 & 25 Vict. c. 100, s. 41, "whosoever, in pursuance of any "unlawful combination or conspir-"acy to raise the rate of wages, or "of any unlawful combination or "conspiracy respecting any trade, "business or manufacture, or re-"specting any person concerned or " employed therein, shall unlawfully " assault any person, shall be guilty " of a misdemeanor, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "imprisoned for any term not ex-"ceeding two years, with or with-"out hard labour." (Former provision, 9 Geo. 4, c. 31, s. 25.)

8. Occasioning actual Bodily Harm.
By 24 & 25 Vict. c. 100, s. 47,
"whosoever shall be convicted up"on an indictment of any assault oc"casioning actual bodily harm, shall
be liable, at the discretion of the
"court, to be kept in penal servi"tude for the term of five years (27
"& 28 Vict. c. 47), or to be impris"oned for any term not exceeding

"two years, with or without hard " labour." (Former provision, 14 & 15 Vict. c. 100, s. 29, repealed by

24 & 25 Vict. c. 95.)

Upon a count for assaulting, beating, wounding and occasioning actual bodily harm, against the statute, a prisoner may be convicted of a common assault. Reg. v. Oliver, Bell, C. C. 287; 8 Cox, C. C. 384; 30 L. J., M. C. 12; 6 Jur., N. S. 1214; 9 W. R. 60; 3 L. T., N. S. 311.

A. was indicted for an assault. and for having thereby unlawfully and maliciously inflicted grievous There was a count bodily harm. The injuries for a common assault. inflicted were sufficient to amount to grievous bodily harm, and the jury was so told; but they returned as their verdict: "We find the prisoner guilty of an aggravated assault, but without premeditation; it was done under the influence of passion:"-Held, that the verdict was rightly entered upon the count charging the infliction of grievous bodily harm. Reg. v. Sparrow, 8 Cox, C. C. 393; Bell, C. C. 298; 6 Jur., N. S. 1122; 30 L. J., M. C. 43; 9 W. R. 58; 3 L. T., N. S.

Upon an indictment containing a count for an assault occasioning actual bodily harm, under 14 & 15 Vict. c. 100, s. 29, the jury might return a verdict of guilty of a common assault merely. Where the judge declined to receive such a verdict as illegal, and the jury thereupon found a general verdict of guilty, the court awarded a venire de novo. Reg. v. Yeadon, L. &. C. 81; 9 Cox, C. C. 91; 31 L. J., M. C. 70; 7 Jur., N. S. 1128; 10 W. R. 64; 5 L. T., N. S. 329.

### 9. Indictment and Evidence.

An indictment for an assault, false imprisonment and rescue, stated that the jndges of the court of record of the town and county of P.

one of the serjeants at mace to the said town and county to arrest W., by virtue of which T. B. was proceeding to arrest W., within the jurisdiction of the court, but that the defendant assaulted T. B. in the due execution of his office, and prevented the arrest:—Held that such indictment was bad, it not appearing that T. B. was an officer of the court; and that there could not be judgment after a general verdict on such a count as for a common assault and false imprisonment, because the jury must be taken to have found that the assault and imprisonment were for the cause therein stated, which cause appears to have been that the officer was attempting to make an illegal arrest of another, which being a breach of the peace, the defendant might, for aught that appeared, have lawfully interfered to prevent it. Rex v. Osmer, 5 East, 304; 1 Smith, 555.

An indictment against two for an assault on two, is bad. Anon., Lofft, And see Rex v. Benfield, 2

Burr. 983.

A count for night-poaching may be joined with a count on 9 Geo. 4, c. 69, s. 2, for assaulting a gamekeeper authorized to apprehend, and with counts for assaulting a gamekeeper in the execution of his duty, and for a common assault. Rex v. Finacane, 5 C. & P. 551—Parke.

An indictment charging that the defendant made an assault upon Henry B. B., and him the said William B. B., did beat, wound and illtreat, is good, in arrest of judgment. Reg. v. Crespin, 11 Q. B. 913; 12 Jur. 433; 17 L. J., M. C. 128.

Where a defendant has pleaded guilty to an indictment for an assault, the record is evidence against him in an action for the same assault. Reg. v. Fontaine Moreau, 12 Jur. 626; 17 L. J., Q. B. 187; 11 Q. B. 1033—Denman.

On an indictment for an assault on A. B., it is sufficient to prove issued their writ, directed to T. B., that an assault was committed on a

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person bearing that name, although two persons bore the same name, viz. A. B. the elder, and A. B. the younger, and the assault had been committed on the latter only. *Rex* v. *Peace*, 3 B. & A. 579.

## 10. Punishment.

By 24 & 25 Vict. c. 100, s. 47, "whosoever shall be convicted upon "an indictment for a common as-sault, shall be liable, at the dis-cretion of the court, to be impris-mod for any term not exceeding one year, with or without hard labour.

## 11. Costs of Prosecution.

By 24 & 25 Vict. c. 100, s. 74, "where any person shall be convict-"ed on any indictment of any as-" sault, whether with or without bat-"tery and wounding, or either of "them, such person may, if the court "think fit, in addition to any sen-"tence which the court may deem " proper for the offence, be adjudged " to pay to the prosecutor his actual "and necessary costs and expenses " of the prosecution, and such mod-"erate allowance for the loss of "time as the court shall by affida-"vit, or other inquiry and examina-"tion, ascertain to be reasonable; "and, unless the sum so awarded "shall be sooner paid, the offender "shall be imprisoned for any term "the court shall award not exceed-"ing three months, in addition to "the term of imprisonment, if any, "to which the offender may be sen-"tenced for the offence."

By s. 75, "the court may, by "warrant under hand and seal, or der such sum as shall be so award ed to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale, shall be paid to the owner; and in case such sum shall be so levied, the imprisonment awarded until pay-

"ment of such sum shall thereupon cease."

A conviction of a defendant for unlawfully wounding, and his being sentenced therefore to a term of imprisonment, and to pay a sum of money to the prosecutor of the indictment, for his necessary costs of the prosecution, and a moderate allowance for his loss of time, pursuant to 24 & 25 Vict. c. 100, s. 74, form no bar to his subsequently suing the defendant for the same assault, and recovering damages for his bodily suffering and medical expenses occasioned thereby. Lowe v. Horwarth, 13 L. T., N. S. 297—Exch.

## 12. Summary Convictions.

## (a) Statute.

By 24 & 25 Viet. c. 100, s. 42, " where any person shall unlawfully "assault or beat any other person, "two justices of the peace, upon "complaint by or on behalf of the "party aggrieved, may hear and "determine such offence, and the "offender shall, upon conviction "thereof before them, at the discre-"tion of the justices, either be com-"mitted to the common gaol or "house of correction, there to be "imprisoned, with or without hard "labour, for any term not exceed-"ing two months, or else shall for-"feit and pay such fine as shall "appear to them to be meet, not "exceeding together with costs (if "ordered), the sum of 5l.; and if " such fine as shall be so awarded, to-"gether with the costs (if ordered), " shall not be paid, either immedi-"ately after the conviction or with-"in such period as the said justices " shall at the time of the conviction "appoint, they may commit the of-"fender to the common gaol or "house of correction, there to be "imprisoned, with or without hard "labour, for any term not exceeding "two months, unless such fine and "costs be sooner paid."

provision, 9 Geo. 4, c. 31, s. 27, repealed by 24 & 25 Viet. c. 95.)

By s. 43, "when any person shall "be charged before two justices of "the peace with an assault or bat-"tery upon any male child whose "age shall not in the opinion of "such justices exceed fourteen years, " or upon any female, either upon "the complaint of the party ag-"grieved or otherwise, the said jus-"tices, if the assault or battery is of "such an aggravated nature that it "cannot in their opinion be suffi-"ciently punished under the provis-"ions hereiubefore contained as to "common assaults and batteries, "may proceed to hear and determ-"ine the same in a summary "way, and, if the same be proved, " may convict the person accused; "and every such offender shall be "liable to be imprisoned in the "common gaol or house of correc-"tion, with or without hard labour, "for any period not exceeding six "months, or to pay a fine not ex-"ceeding (together with costs) the "sum of 20l., and in default of pay-"ment to be imprisoned in the com-"mon gaol or house of correction "for any period not exceeding six "months, unless such fine and costs "be sooner paid, and, if the justices "shall so think fit, in any of the "said cases, shall be bound to keep "the peace and be of good behav-"iour for any period not exceeding "six months from the expiration of "such sentence." (Former provision, 16 & 17 Vict. c. 30, s. 1.)

By s. 44, "if the justices, upon "the hearing of any such case of "assault or battery upon the merits, "where the complaint was prefer-"red by or on behalf of the party "aggrieved, under either of the last "two preceding sections, shall deem "the offence not to be proved, or "shall find the assault or battery "to have been justified, or so tri-"fling as not to merit any punish-"ment, and shall accordingly dis"miss the complaint, they shall

"forthwith make out a certificate under their hands stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred." (Former provision, 9 Geo. 4, c. 31, s. 27.)

By s. 45, "if any person against "whom any such complaint as in "either of the last three preceding " sections mentioned shall have been preferred by or on behalf of the party aggrieved, shall have ob-"tained such certificate, or hav-"ing been convicted, shall have paid the whole amount adjudged "to be paid, or shall have suffered "the imprisonment, or imprisonment with hard labour awarded, "in every such case he shall be re-"leased from all further or other proceedings, civil or criminal, for "the same cause." (Former provision, 9 Geo. 4, c. 31, s. 28.)

By s. 46, "provided, that in case "the justices shall find the assault " or battery complained of to have "been accompanied by any attempt "to commit felony, or shall be of "opinion that the same is, from any " other circumstance, a fit subject for "a prosecution by indictment, they "shall abstain from any adjudica-"tion thereupon, and shall deal with "the same in all respects in the same "manner as if they had no author-"ity finally to hear and determine "the same: provided also, that noth-"ing herein contained shall author-"ize any justices to hear and determ-"ine any case of assault or battery "in which any question shall arise "as to the title to any lands, tene-"ments or hereditaments, or any "interest therein or accruing there-"from, or as to any bankruptcy or "insolvency, or any execution un-"der the process of any court of "justice." (Former provision, 9 Geo. 4, c. 31, s. 22.)

A previous summary conviction for an assault under 24 & 25 Vict. c. 100, s. 45, is not a bar to an indictment for manslaughter of the

party assaulted, founded upon the same facts. Reg. v. Morris, 10 Cox, C. C. 480; 1 L. R., C. C. 90; 36 L. J., M. C. 84; 16 L. T., N. S. 636; 15 W. R. 990.

## (b) Complainant or Informant.

An information made before a magistrate stated that the informant, having been assaulted and beaten by another person, prayed that he might be bound over to keep the peace towards him. the magistrates before whom the case was heard proceeding to deal with the merits of the question of the assault, the informant protested against their adjudicating upon it: —Held, that the justices had no jurisdiction to convict summarily the offending party of the assault against the will of the informant, as under 9 Geo. 4, c. 31, s. 27, the justices had no jurisdiction to convict of an assault unless the party aggrieved complained of that assault before them with a view to their adjudicating upon it. Reg. v. Deny or Totness (Justices), 2 L. M. & P. 230; 15 Jur. 227; 20 L. J., M. C. 189— B. C.—Erle.

# (c) Hearing and Certificate.

A party having been summoned before two justices under 9 Geo. 4, c. 31, s. 27, for an assault, and having appeared and pleaded not guilty, the complainant declined to proceed, stating that he meant to bring an The justices thereupon dismissed the complaint, and gave the defendant a certificate as follows: -"We deemed the offence not proved, inasmuch as the complainant did not offer any evidence in support of the information, and having accordingly dismissed the complaint":-Held, that what passed before the justices constituted a hearing, and that the certificate was a complete bar to an action for the assault. Tunnicliffe v. Tedd, 5 C. B. 553; 17 L. J., M. C. 67.

A., having laid an information

against B. for an assault, under 9 Geo. 4, c. 31, took out a summons, which was served on B., but before the day fixed for the hearing, gave notice to B. that the summons was withdrawn, and also to the magistrate's clerk that he, A., should attend not on the day. B., however, attended on the day, and claimed, in the absence of the complainant, to have the charge dismissed, and to have granted a certificate of dismissal, pursuant to the statute. The justices dismissed the charge, and granted a certificate, which stated the above facts:—Held, that what was done amounted to a hearing within 9 Geo. 4, c. 31, s. 27, and that the certificate accordingly was a bar to an action for the same as-Vaughton v. Bradshaw, 9 C. B., N. S. 103; 7 Jur., N. S. 468; 30 L. J., C. P. 93: 9 W. R. 120; 3 L. T., N. S. 373.

Where under 9 Geo. 4, c. 31, ss. 27-29, a complaint of assault or battery has been made to two justices of the peace, who dismissed the complaint and gave the party a certificate accordingly, the certificate may be pleaded in bar to an indictment founded on the same facts, charging assault and battery, accompanied by malicious cutting and wounding, so as to cause grievous or actual bodily harm. Reg. v. Ebrington, 1 B. & S. 688; 9 Cox, C. C. 86; 8 Jur., N. S. 97; 31 L. J., M. C. 14; 10 W. R. 13; 5 L. T., N. S. 284.

The granting a certificate of dismissal of the complaint is, when a case is brought within sect. 27 of the 9 Geo. 4, c. 31, a ministerial, not a judical act, and a magistrate is therefore bound to grant it. *Hancock* v. *Somes*, 1 El. & El. 795; 5 Jur., N. S. 983; 28 L. J., M. C. 196.

The certificate, if drawn up forthwith and delivered to the party against whom the complaint is preferred, is a good bar to a subsequent action for the assault, though not drawn up in the presence of the

parties, or applied for by the party against whom the complaint was preferred. *Ib*.

A certificate applied for by the party entitled, five days after a complaint had been dismissed, and granted two days after the application, but dated as of the day upon which the complaint was made, is made out forthwith, and is a good defence to a subsequent action for the same assault. Costar v. Hetherington, 1 El. & El. 802; 5 Jur., N. S. 985; 28 L. J., M. C. 198.

To an action for an assault, the defendant pleaded that he had been summoned by the plaintiff before a magistrate, who convicted him in the costs of the complainant and hearing, which he had paid. At the trial the magistrate's clerk produced his note-book, by which it appeared that the magistrate had merely ordered the defendant to enter into his recognizances, and pay the expense thereof; the clerk also said in such cases no conviction was ever drawn up:—Held, that the plea was bad, and did not disclose a defence under 24 & 25 Vict. c. 100, s. 45; that it was not proved; and that, even if there was a conviction, the proper proof was not adduced. Hartley v. Hindmarsh, 1 L. R., C. P. 553; 12 Jur., N. S. 502; 1 H. & R. 607; 35 L. J., M. C. 255; 14 W. R. 862.

If a party is charged before two magistrates with an assault, and they dismiss the complaint, giving him a certificate, he cannot avail himself of this certificate as a defence to an action for the same assault, unless it is specially pleaded. Harding v. King, 6 C. & P. 427—Gurney.

To an action of assault and battery, a certificate, under 24 & 25 Vict. c. 94, s. 44, may be pleaded, together with a plea that the assault was committed in order to prevent a breach of the peace. Lawler v. Kelly, 15 Ir. C. L. R., App. 1.

When an assault charged in an [

indictment and that referred to in a certificate of dismissal by a magistrate appear to have been on the same day, it is primâ facie evidence that they are one and the same assault, and it is incumbent on the prosecutor to shew that there was a second assault on the same day, if he alleges that such is the case. Reg. v. Westley, 11 Cox, C. C. 139—Russell Gurney.

The appearance of the defendant before the magistrate, the recital in the certificate of the fact of a complaint having been made, and of a summons having been issued, are sufficient evidence of those facts. *Ib*.

# (d) Aggravated upon Women and Children.

The 16 & 17 Vict. c. 30, s. 1, gave jurisdiction to two justices of the peace sitting at a place where petty sessions are usually held to convict persons of certain assaults, and a warrant of commitment in the general form provided by the 11 & 12 Vict. c. 43, Schedule (P.), was sufficient, without any allegation that the convicting justices were sitting at a place where petty sessions are usually held. Allison, Ex parte, 10 Exch. 561; 24 L. J., M. C. 73.

An information was laid against a man for assaulting and abusing a On the hearing before the magistrates, she gave evidence tending to shew that the man had committed a rape on her. The magistrates convicted him of an aggravated assault, under 16 & 17 Vict. The conviction recited the information, and found the assault proved, and sentenced him, for his offence, to be imprisoned in the house of correction for six calendar months:—Held, that the conviction for the minor offence was good. Thompson, Ex parte, 6 Jur., N. S. 1247-Q. B.: S. P., Wilkinson v. Dutton, 3 B. & S. 821; 32 L. J., M. C. 152.

An information before justices

charged the defendant with having unlawfully assaulted and abused a She and the defendant were each represented by attorneys, and at the hearing, while the attorney for the woman was opening his case, the attorney for the defendant objected that the facts he had stated constituted a case of rape, and that the justices had no jurisdiction. It was then suggested that the case should be treated as a charge of an aggravated assault. The case proceeded, and the defendant was convicted of an aggravated assault. It appeared by affidavits upon an application for a habeas corpus, with a view to the discharge of the defendant, that the evidence of the woman was to the effect that the defendant had ravished her:—Held, per Pollock, C. B., and Wilde, B., that the charge was one over which the justices had no jurisdiction; and that it was competent for the court to look at the evidence with a view to see whether, in point of fact, the case was within the jurisdiction of Thompson, In re, 30 L. J., M. C. 19; 6 H. & N. 193; 9 W. R. 203; 9 Cox, C. C. 70; 3 L. T., N. S. 409; 7 Jur., N. S. 48.

Held, per Bramwell, B., and Channell, B., that the charge did not imply more than a common assault, that the justices had jurisdiction, and that the court could not review the decision of the justices upon the fact. *Ib*.

# (e) Amounting to Felony.

A party was convicted summarily by two justices for an assault. The act appeared to have been done with intent to commit an unnatural offence, but not to have been attended with violence. A certiorari was moved for, on the ground that the offence, if committed, was within 9 Geo. 4, c. 31, s. 29, which prevents justices from convicting where an attempt to commit felony appears. The court refused to interfere, as no excess of jurisdiction ap-

peared on the face of the conviction, and the evidence, of which the magistrates were the judges, did not clearly shew an intention to commit felony. *Anon.*, 1 B. & Ad. 382.

## (f) Fines.

Before 24 & 25 Vict. c. 100, s. 42.] -By 9 Geo. 4, c. 31, s. 27, power was given to two justices, in cases of assault, to impose upon the offender a fine not exceeding 5l., "to be paid to some one of the overseers of the poor, or to some other officer of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which the parish, township, or place shall be situate;" and s. 35 provided that the conviction might be drawn up in a given form, or in any other form of words to the same effect:—Held, that a conviction by which the penalty was ordered to be paid "to the treasurer of the county of C., in which the offence was committed, to be by him applied according to the directions of the statute," or the party in default to be imprisoned for two months, was bad, and that the justices were liable in trespass for the imprisonment of the party under it. Chaddock v. Wilbraham, 5 C. B. 645; 3 New Sess. Cas. 227; 12 Jur. 136 ; 17 L. J., M. C. 79.

A. was summoned under 9 Geo. 4, c. 31, ss. 27, 33, for an assault. He did not appear, and the justices, upon proof of service, heard the case and convicted A. The conviction was drawn up in the form given in sect. 35, and by it A. was adjudged to forfeit and pay 2l. 10s. and 11s. 6d. for costs; and, in default of immediate payment, to be imprisoned for six weeks, unless the sum should be sooner paid; and the conviction directed that the 2l. 10s. should be paid to one of the overseers of the parish within which the offence

was committed, and the 11s. 6d. to the party aggrieved. And directly thereafter, no payment being made, the justices, in the absence of A., and without further summons, issued a warrant of commitment for default of payment:—Held, that the commitment was legal. Arnold v. Dimsdale, 2 El. & Bl. 580; 17 Jur. 1157; 22 L. J., M. C. 161.

### VII. BIGAMY.

The Offence, 59.

2. On Absence or Death of Parties,

3. Where Triable, 64. 4. Indictment, 64.

5. Evidence and Witnesses, 65.

# 1. The Offence.

The Statute.]—By 24 & 25 Vict. c. 100, s. 57, "whosoever, being "married, shall marry any other " person during the life of the form-"er husband or wife, whether the "second marriage shall have taken "place in England or Ireland or "elsewhere, shall be guilty of felony, "and, being convicted thereof, shall " be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "seven years and not less than five "years (27 & 28 Vict. c. 47); or "to be imprisoned for any term not "exceeding two years, with or with-"out hard labour;"

"And any such offence may be "dealt with, inquired of, tried, de-"termined, and punished in any "county or place in England or Ire-"land where the offender shall be "apprehended or be in custody, in "the same manner in all respects as "if the offence had been actually "committed in that county or " place;"

"Provided that nothing in this "section contained shall extend to "any second marriage contracted "elsewhere than in England and "Ireland by any other than a sub-"iect of her Majesty, or to any per"husband or wife shall have been "continually absent from such per-"son for the space of seven years "then last past, and shall not have "been known by such person to be "living within that time, or shall "extend to any person who, at the "time of such second marriage, "shall have been divorced from the "bond of the first marriage, or to "any person whose former marriage "shall have been declared void by "the sentence of any court of com-"petent jurisdiction." (Similar to 9 Geo. 4, c. 31, s. 22.)

By 9 Geo. 4, c. 31, 1 Jac. 1, c. 11, 35 Geo. 3, c. 67; and so much of 4Edw. 1, s. 3, 18 Edw. 3, s. 3, and 1 Edw. 6, c. 12, as related to this subject, were repealed. By 24 & 25 Vict. c. 95, the 9 Geo. 4, c. 31, s.

22, is repealed.

In respect of what marriages. ]— After a marriage contracted in England, the parties went to reside in Scotland, where they were divorced by reason of adultery by the husband—he then married again in England, and on a trial for bigamy, was found guilty, notwithstanding the Scotch sentence of divorce. Lolley's case, 2 C. & F. 567, n.; R. & R. C. C. 237.

Semble, that assuming a fictitious name upon the second marriage will not prevent the offence from being complete. Rex v. Allison, R. & R. C. C. 109.

And if the prisoner has written down the names for the publication of the banns, he is precluded from saying that the woman was not known by the name he delivered in, and that she was not rightly described by that name in the indictment. Rex v. Edwards, R. & R. C. C. 283.

On an indictment against a man for bigamy, it appeared, that for the purpose of concealment, the second wife was married by a name by which she had never been known: "son marrying a second time whose | —Held, that this was no answer to

the charge, although, if the first marriage had taken place under such circumstances, that would have been thereby rendered void. Rexv. Penson, 5 C. & P. 412—Gurney.

If the first marriage was by banns, it is no objection that the parties did not reside in the parish where the banns were published, and the marriage celebrated. v. Hind, R. & R. C. C. 253.

In the publication of banns in 1817, a woman named Mary Hodgkinson was called White, a surname entered by mistake in the register of her baptism, but which she had never gone by or been entitled to. The false name was given to the officiating clergyman without any intention to mislead; nor did any individual having any interest in the marriage appear to have been deceived:—Held, that the marriage was void. It might have been otherwise, if (without any fraudulent intent) there had been only a partial variation of the name, or the addition or suppression of one christian name, or the name had been one which the party had ever used or been known by.. Rex v. Tibshelf, 1 B. & Ad. 190.

To render a marriage invalid within 4 Geo. 4, c. 76, s. 22, which enacts, "that if any person shall knowingly and wilfully intermarry without the publication of banns, the marriage of such persons shall be null and void," it must be contracted by both parties with a knowledge that no due publication has taken place; and, therefore, where the intended husband procured the banns to be published in a christian and surname which the woman had never borne, but she did not know that fact until after the solemnization of the marriage, the marriage was valid. Rex v. Wroxton, 1 N. & M. 712; 4 B. & Ad. 640.

A marriage, which would have been void by 26 Geo. 2, c. 33, and had once been rendered valid by 3

quently rendered invalid by the marriage of either of the parties, during the life of the other, with a third person. Rex v. St. John Delpike, 2 B. & Ad. 226.

The 5 & 6 Will. 4, c. 54, renders absolutely void all marriages solemnized after the time of its passing between persons within the prohibited degrees, and which were previously voidable only by sentence of the Ecclesiastical Court pronounced during the life of both Reg. v. Chadwick (in erparties. ror), 11 Q. B. 173; 12 Jur. 174; 17 L. J., M. C. 33; 2 Cox, C. C. 381.

Therefore, a marriage with deceased wife's sister contracted after the passing of that act, is absolutely

A., a married woman, in the lifetime of her husband, married B., who was a widower, B. having been the husband of A.'s deceased sister: -Held, that this was bigamy in A., and that the circumstance that the marriage of A. and B. would have been wholly void under 5 & 6 Will. 4, c. 54, s. 2, even if A. had been unmarried, made no difference. v. Brawn, 1 C. & K. 144; 1 Cox, C. C. 33—Denman.

Held, also, that if B. knew at the time of his marriage with A. that she was a married woman, he might be convicted of the felony of counselling A. to commit bigamy. Ib.

Minors. — The marriage of a minor by licence without the consent required by 4 Geo. 4, c. 75, s. 16, is valid. Rex v. Birmingham, 2 M. & R. 230; 8 B. & C. 20. So under 6 & 7 Will. 4, c. 85, s. 25.

It is not necessary under a prosecution for bigamy for a subsequent marriage of a minor, to prove the consent of the parent to the first marriage. Reg. v. Clark, 2 Cox, C.C. 183—Rolfe.

Irish. ]-By 9 Geo. 2, c 11 (Irish), the marriage of a minor without consent is void; but if no suit be Geo. 4, c. 75, s. 2, cannot be subsel commenced within one year after the marriage, it shall be good. Therefore, where it appeared in a case of bigamy that the first marriage was celebrated in Ireland by licence, when the prisoner was a minor, without his father's consent:—Held, that it was no defence, as more than a year had elapsed from the time of the marriage. Rex v. Jacobs, 1 M. C. C. 140.

But by 7 & 8 Vict. c. 81, s. 32, proof of consent of parents or guar-

dians is unnecessary.

The marriage of a Protestant in Ireland to a Roman Catholic, by a Roman Catholic priest, is void by 19 Geo. 2, c. 33 (*Irish*). Sunderland's case, 2 Lewin, C. C. 109—Patteson.

In Ireland, the marriage of two Roman Catholics by a Roman Catholic priest is good; and if a person at the time of such marriage declares himself to be a Roman Catholic, and the woman is a Roman Catholic, this is a good marriage as against him; and if he is afterwards tried for bigamy on this marriage (he having been before married to another wife, who was still alive), he will not be allowed to set up his supposed Protestantism as a defence to the charge. Reg. v. Orgill, 9. C. & P. 80—Alderson.

To prove a marriage of two Roman Catholics in Ireland, evidence was given that the Rev. W. O'S, (who officiated) acted as a Roman Catholic priest, and that the marriage (as was usual) took place at his house, and he asked the parties if they were Roman Catholics, and that they said they were so; that part of the ceremony was in English and part in Latin; and that having asked the man if he would take the woman as his wife, and the woman if she would take the man as her husband, and each having answered in the affirmative, he pronounced them married:—Held, sufficient. Ib.

A. was married to S., according was not a competent witness to to the rites of the Established prove the law of Scotland as to

Church, in 1858, and in April, 1865, during the life-time of S., he was married to B. in a Roman Catholic church, in lin. C. knew A. six months previously to the marriage, and believed him to be a Roman Catholic. He told B. that he was a Roman Catholie. He had been born and reared a Protestant, and had attended the Protestant service on Christmas morning, 1865. The jury found that A. was a professing Protestant within twelve months previously to the marriage, and that he had held himself out as a Roman Catholic to the clergyman who married him, and had told the woman he was a Roman Catholic, and the jury convicted him of bigamy:—Held, that he was wrongly convicted. Reg. v. Fanning, 17 Ir. C. L. R. 289; 14 W. R. 701; 10 Cox, C. C. 411.

Scotch.]—For what is necessary to constitute a valid marriage in Scotland, see Graham's case, 2 Lewin, C. C. 97; Dalrymple v. Dalrymple, 2 Hagg. Cons. R. 54.

A., a subject of her Majesty, and resident in England, was married in Scotland, according to the law of Scotland. He subsequently married again in the same country, and, according to the same law, his first wife being alive. Both wives, at the time of their marriage, were resident in England:—Held, that he had committed an offence against 9 Geo. 4, c. 31, s. 22. Reg. v. Topping, Dears. C. C. 647; 2 Jur., N. S. 428; 25 L. J., M. C. 72; 7 Cox, C. C. 103.

On a trial for bigamy a woman was called as a witness, who stated that she was present at a ceremony performed in a private house in Scotland, by a minister of some religious denomination; that she herself was married in the same way, and that parties always married in Scotland in private houses:—Held, that she was not a competent witness to prove the law of Scotland as to

marriage, and that her evidence did not prove the fact of a marriage. Reg. v. Povey, 6 Cox, C. C. 83; Dears. C. C. 32; 22 L. J., M. C. 19.

In what Chapels or Places.]—Where the first marriage was solemnized in a chapel, it was necessary to show either that the chapel was one in which banns had been usually published before 26 Geo. 3, c. 33, or that the chapel was built and consecrated after that act, and before 6 Geo. 4, c. 92; and proof that marriages have been solemnized there for the last twenty years is not sufficient for this purpose. Reg. v. Bowen, 2 C. & K. 227—Platt.

The prisoner was convicted on an indictment for bigamy. It was alleged that the first marriage took place in a dissenting chapel duly licensed for marriages, and a witness was called who proved that he was present at the marriage, that it took place in the dissenting chapel in the presence of the registrar, that the entry of the marriage in the registrar's book was signed by the witness as a witness to the marriage, and that the parties afterwards lived together as husband and wife for some years:—Held, first, that the parol testimony of the witness sufficiently proved the fact of marriage. Reg. v. Manuaring, Dears. & B. C. C. 132; 2 Jur., N. S. 1236; 26 L. J., M. C. 10; 7 Cox, C. C. 192.

Held, secondly, that there was prima facie evidence that the chapel was duly registered, and was a place in which marriages might legally be solemnized. *Ib*.

A witness produced a certificate, under the hand of the superintendent registrar, of the fact that the chapel had been duly registered. It did not purport to be a copy or an extract, but the witness proved that he had examined it with the register book at the office of the su-

perintendent registrar, and that it was correct:—Held, that the document was admissible as an examined copy or extract from the superintendent registrar's book, under 14 & 15 Vict. c. 99, s. 14, and was therefore good evidence of the due registration of the chapel. *Ib*.

Proof of a marriage before the registrar, although in a chapel not regularly licensed and registered, is sufficient. Reg. v. Tilson, 1 F. &

F. 54—Wightman.

Proof of a marriage in a chapel in the presence of the registrar of the district and two witnesses, is sufficient without proving that the chapel was registered. Reg. v. Cradock, 3 F. & F. 837—Willes.

Upon an indictment for bigamy, it appeared that the prisoner was married to his first wife in a place which had been registered pursuant to 6 & 7 Will. 4, c. 85. It was proved that notice of the marriage had been given to the superintendent registrar; but that notice was not produced by him. The registers of the marriage and of the building, were, however, produced and read. It was objected that there ought to have been further evidence that due notice was given to the superintendent registrar; that he issued his certificate thereon, and that the marriage was celebrated in the building specified in that notice and certificate:—Held, that the evidence given proved a sufficient prima facie case, and that the conviction was right. Reg. v. Hawes, 2 Cox, C. C. 432; 1 Den. C. C. 270.

# 2. On Absence or Death of Parties.

Semble, that the construction of 9 Geo. 4, c. 31, s. 22, in relation to the offence of bigamy, is this: not that the party, charged to be deprived of the benefit of its provision as a defence, must have known at the time when he contracted the second marriage that the first wife had been alive during the seven years preceding; but that to bring

him within that provision, he must have been ignorant during the whole of those seven years that she was alive. Reg v. Cullen, 9 C. & P. 681—Patteson:

When the prisoner's first wife had left him sixteen years, and it was proved by the second wife that she had known him for nine years living as a single man, and that she had never heard of the first wife, who it appears had been living seventeen miles from where the prisoner resided:—Held, that on this evidence the prisoner ought to be acquitted on the proviso contained in 9 Geo. 4, c. 31, s. 22. Reg. v. Jones, Car. & M. 614—Cresswell.

A woman was convicted on an indictment for bigamy. It appeared that her first husband had been continually absent from her for seven years next preceding the second marriage; on which occasion she represented herself as a single woman, and was married by her maiden name. The jury being asked to consider whether she knew her husband to be alive at the time of the second marriage; and if not, whether she had the means of acquiring the knowledge, found that they had no evidence of her knowledge, but the jury was of opinion that she had the means of acquiring knowledge if she had chosen to make use of them:—Held, that upon that finding the conviction could not be sustained. Reg. v. Briggs, Dears. & B. C. C. 98; 2 Jur., N. S. 1195; 26 L. J., M. C. 7; 7 Cox, C. C. 175.

Whether evidence is necessary on the part of the prosecution to shew that the prisoner married, knowing his second wife to be alive, depends upon the particular fact of each case. Reg. v. Ellis, 1 F. & F. 309—Willes.

It is a question for the jury whether the prisoner knew that his first wife was alive. Reg. v. Dane, 1 F. & F. 323—Bramwell.

The burden of proof that a person charged with bigamy has not

been continually absent from his wife for seven years, and that she was not known to him to be living within that time, is on the prosecution and not on the prisoner, for how can he prove a negative that he did not know. Reg. v. Heaton, 3 F. & F. 819—Wightman.

When it is proved that the prisoner and his first wife have lived apart for the seven years preceding the second marriage, it is incumbent on the prosecution to shew that during that time he was aware of her existence; and, in absence of such proof, he is entitled to be acquitted. Reg. v. Curgenwen, 10 Cox, C. C. 152; 1 L. R., C. C. 1; 11 Jur., N. S. 984; 35 L. J., M. C. 58; 14 W. R. 55; 13 L. T., N. S. 383.

Where no evidence was given on either side as to his knowledge that his wife was alive, but it was proved that they had separated by agreement in 1843, and in 1857 he produced her at a trial in which he was interested:—Held, that it was for the jury to say whether there was an absence of knowledge on his part that his wife was alive in 1855, the date of the second marriage. Reg. v. Cross, 1 F. & F. 510—Cockburn.

Evidence of the cohabitation of the first husband with another woman, his reputed wife, before the time of his marriage with the accused, and of such reputed wife being alive after that marriage, is sufficient evidence of a prior marriage to warrant an acquittal. Reg. v. Wilson, 3 F. & F. 119—Crompton.

Onus of Proof.]—On a trial for bigamy, it was proved that the prisoner married A. in 1836, left him in 1843, and married again in 1847. Nothing was heard of A. after the prisoner left him, nor was any evidence given of his age:
—Held, that there was no presumption of law, either in favor of or against the continuance of A.'s life

up to 1847; but that it was a question for the jury, as a matter of fact, whether or not A. was alive at the date of the second marriage in 1847. Reg. v. Lumley, 1 L. R., C. C. 196; 11 Cox, C. C. 274; 17 W. R. 685; 38 L. J., M. C. 86; 20 L. T., N. S.

In 1863 the prisoner married his first wife, lived with her about a week, and then left her. It was not proved that he had since seen her. In 1867 he married another woman, his first wife being then alive. On the trial of an indictment for bigamy, the judge told the jury that they must be satisfied that the prisoner knew that his first wife was alive at the time of the second marriage:—Held, that the direction was right, and that it was not necessary to prove affirmatively that at the time of the second marriage he knew that his first wife was alive. Reg. v. Jones, 21 L. T., N. S. 396—C. C. R.

It is a good defence to an indictment for bigamy that the prisoner at the time of the second marriage, honestly and bona fide believed that his first wife was dead, and had reasonable grounds for so believing. Reg. v. Horton, 11 Cox, C. C. 670.

#### 3. Where Triable.

By 24 & 25 Viet c. 100, s. 57, "the offence may be dealt with, in-"quired of, tried, determined, and "punished in any county or place "in England or Ireland where the "offender shall be apprehended or " be in custody, in the same manner "in all respects as if the offence had "been actually committed in that "county or place." (Former provision, 9 Geo. 4, c. 31, s. 22.)

Where a prisoner, having been apprehended for larceny, was detained in the same county for bigamy, the detainer was such an apprehension as would warrant the inJac. 1, c. 11. Rex v. Gordon, R. & R. C. C. 48,

An indictment for bigamy, committed in one county, found by a jury of another where the prisoner was apprehended, must state that fact. Rex v. Fraser, 1 M. C. C. 407.

But if an indictment for bigamy is tried at the same assizes at which the bill is found, it will sufficiently appear by the caption, that the party is in custody in the county, so as to give the court jurisdiction; and there need not, in that case, be any averment in the indictment as to the custody. Reg. v. Whiley, 1 C. & K. 150; 2 M. C. C. 186. See Reg. v. Smythies, 1 Den. C. C. 498; 2 C. & K. 878.

An indictment was allowed to be amended as to the allegation of apprehension in the county. Reg. v. Smith, 1 F. & F. 36—Channell.

### Indictment.

The second wife being described as E. C., widow; she was, in fact, not a widow, nor had she ever been represented or reputed to be so: was formerly a fatal variance, but now amendable under 14 & 15 Vict. c. 100, s. 1. Rex v. Deeley, 4 C. & P. 579; 1 M. C. C. 303.

If there was a discrepancy between the christian name of the prisoner's first wife as laid in the indictment and as stated in the copy of the certificate which was produced to prove the first marriage, the prisoner must be acquitted, unless that discrepancy could be explained, or in the absence of such proof, unless it could be shewn that the first wife was known by both names. Reg. v. Gooding, Car. & M. 297—Maule.

In an indictment, it is sufficient to aver the life of the first wife, without going on to allege that the marriage is still subsisting. Murray v. Reg. (in error), 7 Q. B. 700; 9 Jur. dicting him in that county, under 1 | 596; 14 L. J., Q. B. 357.

5. Evidence and Witnesses.

Where a first marriage was solemnized under 6 & 7 Will. 4, c. 85, the certificate authorized by that act and 6 & 7 Will. 4, c. 86, s. 38, coupled with the identity of the parties, is sufficient primâ facie evidence of such marriage. *Reg.* v. *Hawes*, 1 Den. C. C. 270; 2 Cox, C. C. 432.

It is not necessary to put the original register in evidence to prove a marriage. Sayer v. Glossop, 2 Exch. 409; 2 C. & K. 694; 12 Jur. 465—Parke.

A photographic likeness of the first husband allowed to be shewn to the witnesses present at the first marriage, in order to prove his identity with the person mentioned in the marriage certificate. Reg. v. Tolson, 4 F. & F. 103—Willes.

A prisoner's declarations, deliberately made, of a prior marriage in a foreign country, are sufficient evidence of such marriage, without proving it to have been celebrated according to the law of the country. Reg. v. Newton, 2 M. & Rob. 503; S. C., nom. Reg. v. Simmonsto, 1 C. & K. 164—Wightman.

Semble, that an acknowledgment alone by the prisoner of the fact of the first marriage would not be sufficient evidence of that fact. Reg. v. Trueman, 1 East, P. C. 470.

But proof of such an acknowledgment, together with evidence of cohabitation, and that the prisoner backed his assertion by producing to the witness a copy of a proceeding in a Scotch court, for having improperly contracted the marriage (but which was a nullity), will be sufficient evidence of the first marriage. *Ib*.

There ought to be some proof of ined upon the the first marriage, beyond the mere statement of the prisoner while in 279—Hullock.

custody; therefore, where a man went to a police station, and stated that he had committed bigamy, and when and where the first marriage took place, and while in custody signed a statement to the same effect, the judge thought this, though some evidence of the first marriage, was not sufficient, and so told the jury. Reg. v. Flaherty, 2 C. & K. 782—Pollock.

On a trial for bigamy, a woman was called as a witness, who stated that she was present at a ceremony performed at a private house in Scotland by a minister of some religious denomination; that she herself was married in the same way, and that parties always married in Scotland in private houses:—Held, that she was not a competent witness to prove the law of Scotland as to marriage, and that her evidence did not prove the fact of a marriage. Reg. v. Povey, Dears. C. C. 32; 17 Jur. 120; 22 L. J., M. C. 19; 6 Cox, C. C. 83.

A sentence of jactitation was not conclusive evidence against an indictment of bigamy; for its validity might be impeached as having been obtained by fraud. *Duchess of Kingston's case*, 1 Leach, C. C. 146; 1 East, P. C. 468.

A reputed first wife cannot give evidence in favour of her supposed husband. *Peat's case*, 2 Lewin, C. C. 111—Alderson.

Quære, whether a woman who has gone through the ceremony of marriage with a man can be allowed to prove the invalidity of the marriage, and that she is not his wife? *Peat's case*, 2 Lewin, C. C. 288.

Semble, that she may be examined upon the voir dire. *Ib.*: *S. P. Rex* v. *Wakefield*, 2 Lewin, C. C. 279—Hullock.

Fish. Dig.--5

#### BURGLARY AND HOUSE-VIII. BREAKING.

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#### 1. Statutes.

By 24 & 25 Vict. c. 96, s. 51, "whosoever shall enter the dwell-"ing-house of another with intent "to commit any felony therein, or, " being in such dwelling-house, shall "commit any felony therein, and "shall in either case break out of "the said dwelling-house in the "night, shall be deemed guilty of "burglary." (Former provision, 7 " & 8 Geo. 4, c. 29, s. 11.)

By s. 1, "the night shall be "deemed to commence at nine of "the clock in the evening of each "day, and to conclude at six of the "clock in the morning of the next

" succeeding day.

By s. 52, "whosoever shall be "convicted of the crime of burg-"lary shall be liable, at the dis-"cretion of the court, to be kept in " penal servitude for life, or for any "term not less than five years (27 " & 28 Vict. c. 47), or to be im-" prisoned for any term not exceed-"ing two years, with or without "hard labour, and with or without "solitary confinement."

By s. 53, "no building, although "within the same curtilage with " any dwelling-house, and occupied "therewith, shall be deemed to be

"part of such dwelling-house for "any of the purposes of the act, "unless there shall be a communi-" cation between such building and "dwelling-house, either immediate " or by means of a covered and in-"closed passage leading from the " one to the other." (Former provision, 7 & 8 Geo. 4, c. 29, s. 13.)

By s. 54, "whosoever shall enter "any dwelling-house in the night "with intent to commit any felony "therein shall be guilty of felony, "and being convicted thereof shall "be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "seven years and not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not "exceeding two years, with " without hard labour, and with or "without solitary confinement."

By s. 55, "whosoever shall break "and enter any building, and com-"mit any felony therein, such build-"ing being within the curtilage of "a dwelling-house, and occupied "therewith, but not being part "thereof, according to the provis-"ion hereinbefore mentioned, or "being in any such building shall "commit any felony therein, and "break out of the same, shall be "guilty of felony, and being con-"victed thereof shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding fourteen years " and not less than five years (27 & "28 Vict. c. 47), or to be impris-"oned for any term not exceeding "two years, with or without hard "labour, and with or without soli-"tary confinement." (Former provision, 7 & 8 Geo. 4, c. 29, s. 14.)

By 7 & 8 Geo. 4, c. 27, 12 Anne, s. 1," was repealed, and so much of "18 Eliz. c. 7, as related to this subject; and 24 & 25 Vict. c. "95, repeals 7 & 8 Geo. 4, c. 29, s. "11, and 7 Will. 4 & 1 Vict. e. "86."

2. Breaking and Entering.

There must be both a breaking and an entering to constitute a burglary, and the breaking must be such as will afford the burglar an opportunity of entering so as to commit the intended felony. Rex v. Hughes, 1 Leach, C. C. 406; 2 East, P. C. 491.

If there is an aperture in a cellar window to admit light, through which a thief enters in the night, this is not burglary. Rex v. Lewis,

2 C. & P. 628—Vaughan.

Where a mill, under the same roof and within the same curtilage as a dwelling-house, had a trapdoor over a gateway, which was only fastened by a lid-door kept down by its own weight, without bolts or other interior fastenings:—Held, that an entry into the mill in the night with intention to steal flour by raising the lid-door amounted to burglary. Rex v. Brown, 2 East, P. C. 487; 2 Leach, C. C. 1016, n.

Though a thief enters a dwelling-house at night through an open door or a window, yet if, when within, he breaks or opens an inner door with intent to commit felony, it is burglary. Rex v. Johnson, 2 East,

P. C. 488.

Introducing the hand between the glass of an outer window and an inner shutter is a sufficient entry to constitute burglary. Rex v.

Bailey, R. & R. C. C. 341.

It is not sufficient to constitute the offence of burglary, that there was an entry without a breaking of the outer door, and a breaking without an entry of an inner one. Reg. v. Davis, 6 Cox, C. C. 369.

And it is a sufficient breaking to constitute such an offence, if the party breaks a pane of glass of a window, and puts his hand in for the purpose of opening the shutter, although he did not succeed in doing so. Rex v. Perkes, 1 C. & P. 300—Park.

Lifting the flap of a cellar usu- so that the pushing against it will

ally kept down by its own weight, is a sufficient breaking for the purpose of burglary. Rex v. Russell, 1 M. C. C. 377.

A shutter-box partly projected from a house, and adjoined the side of the shop window, which was projected by wooden panelling, lined with iron:—Held, that the breaking and entering the shutter-box did not constitute burglary. Rex v. Paine, 7 C. & P. 135—Denman Park Belland.

Denman, Park, Bolland.

A. was charged with breaking into the house of K. and stealing the goods of M. It was proved as to the breaking that the glass of the window had been cut about a month before, but that every portion of the glass remained in its place till he pushed it in, and stole the goods—Held, a sufficient breaking. Reg. v. Bird, 9 C. & P. 44—Bosanquet.

Where, in breaking a window in order to steal property in the house, the prisoner's finger went within the house:—Held, that there was a sufficient entry to constitute burglary. Rex v. Davis, R. & R. C. C.

499.

Throwing up a window, and introducing an instrument between such window and an inside shutter, to force open the shutter, if the hand or some part of it is not within the window, is not a sufficient entry to constitute burglary. Rex

v. Rust, 1 M. C. C. 183.

So where the prisoner raised a window which was not bolted, and thrust a crow-bar under the bottom of the shutter (which was about half a foot within the window), so as to make an indent on the inside of the shutter, but from the length of the bar his hand was not inside the house:—Held, that it was not a sufficient entry to constitute a burglary. Rex v. Roberts, Car. C. L. 293; 2 East, P. C. 487.

Where a window opens upon hinges, and is fastened by a wedge, so that the pushing against it will open it; forcing it open by pushing against it is a sufficient breaking to constitute a burglary. Rex v. Hall, R. & R. C. C. 355.

Removing the fastening of a window by the hand introduced through a partially broken pane of the window, and thereby opening the window and entering, is a breaking; not by breaking the residue of the pane, but by unfastening and opening the window. Rex v. Robinson, 1 M. C. C. 327; S. P. Ryan v. Shilcock, 7 Exch. 72.

A chimney is part of a dwellinghouse, and therefore the getting in at the top is a breaking of the dwelling-house; and where the prisoner, by lowering himself in the chimney, made an entry into the dwelling-house, though he did not enter any of the rooms, it is sufficient to constitute burglary. v. Brice, R. & R. C. C. 450.

Pulling down the sash of a window is a breaking sufficient to constitute burglary, although it has no fastening, and is only kept in its place by the pulley-weight, and it is equally a breaking, although there is an outer shutter which is Rex v. Haines, R. & not put to. R. C. C. 451.

A window was a little open, and the prisoner pushed it wide open and got in:—Held, no sufficient breaking. Rex v. Smith, Car. C. L. 293; 1 M. C. C. 178.

When the family within the house was forced by threats and intimidations to let in the offenders by one of them opening the door: -Held, that it was as much a breaking by those who made use of such intimidations without, to prevail upon them so to open it, as if they had actually burst the door open. Rex v. Swallow, 2 Russ. C & M. 9—Thompson.

On an indictment for burglary, it was proved the legs of the prisoner were seen hanging about a foot from the ground, from a window, and no other part of his body

was visible till he jumped down and ran away:—Held, that though it appeared there was a hole broken in the window large enough to admit a man's head and shoulders, there was no evidence to shew that there had been any actual entry, no property being lost. Reg. v. Meal, 3 Cox, C. C. 70—Coltman.

A servant pretended to concur with two persons, who proposed to him to unite with them in robbing his master's house. The master being out of town, the servant communicated with the police, and acted under their instructions. In consequence of this, a little after nine o'clock one evening, he let in one of the persons, by lifting the latch; but before that person had taken any property he was seized by the police, and, a crow-bar being found upon him, was immediately placed in confinement. After this the servant went out again, and fetched the second person, and let him in the same manner. This person was seized with a basket of plate in his hand, which he had carried from the kitchen, part of the way upstairs:—Held, that neither of the persons could be convicted of burglary; but that the one who was seized with the plate might be convicted of stealing in a dwellinghouse, and also that the other might be indicted as an accessory before the fact to such stealing. Jones, Car. & M. 218 — Maule and Rolfe.

# 3. Breaking Out.

If a person commits a felony in a house, and breaks out of it in the night-time, this is burglary, although he might have been lawfully in the house. Reg. v. Wheeldon, 8 C. & P. 747—Erskine.

On an indictment for stealing wine out of a cellar, and burglariously breaking out therefrom, it appeared that the prisoner broke out of the cellar by lifting up a heavy flap by which the cellar was closed on the

outside next the street; the flap was | not bolted, but it had bolts:—six judges were of opinion that there was a sufficient breaking to constitute burglary, but the remaining six were of a contrary opinion. Rex v. Callan, R. & R. C. C. 157. And see Rex v. Brown, 2 East, P. C. 487; 2 Leach, C. C. 1016, n.

The lifting up of a trap-door covering a cellar, which was merely kept in its place by its own weight, and which had no fastenings, because, it being a new trap-door, they had not been put on, is not a sufficient breaking to constitute a burglary; but unlocking and opening a hall door and running away is a sufficient breaking out of the house. Rex v. Lawrence, 4 C. & P. 231— But, according to Rex v. Bolland. Russell, 1 M. C. C. 377, lifting the flap of a cellar, usually kept down by its own weight, would constitute burglary.

### 4. By Lodgers.

If a lodger in a house has committed a larceny there, and in the night-time even lifts a latch to get out of the house with the stolen property, this is a burglariously breaking out of the house. Reg. v. Wheeldon, 8 C. & P. 747—Erskine.

# 5. What is Night-time.

By 24 & 25 Vict. c. 96, s. 1, "the "night shall be deemed to com-"mence at nine of the clock in the "evening of each day, and to con-"clude at six of the clock in the "morning of the next succeeding (Similar to 7 Will. 4 & 1 Vict. c. 86, repealed.)

In burglary, where the burglary is one night after, a person present at the breaking, though not present at the entering, is in law guilty of the whole offence. Rex v. Jordan, 7 C. & P. 432—Gaselee and Gur-

The prisoner broke the glass of the prosecutor's side door on the

the house at a future time, and actually entered on the Sunday:—Held, that this was burglary, although a day had intervened, the breaking and entering being both by night, and the breaking being with intent afterwards to enter. Rex v. Smith, R. & R. C. C. 417.

#### 6. What is a Dwelling-house.

See 24 & 25 Vict. c. 76, s. 53, by which many of the following cases are affected, but they are retained as they may still serve to illustrate the subject.

If the outhouse is adjoining to the dwelling-house, and occupied as parcel thereof, though there is no common inclosure or curtilage, it may still be considered as part of the mansion. Rex v. Brown, 2 East, P. C. 493.

An outhouse in the yard of a dwelling-house will be parcel of the dwelling-house if the yard is inclosed, though the occupier has another dwelling-house opening into the yard, and he lets such dwellinghouse with easements in the yard. Rex v. Walters, 1 M. C. C. 13.

Two adjoining houses belonging to two partners, of which the rent and taxes are paid from the joint fund, may still be the respective mansions of each partner, if there is no communication from one to the other but through the outer doors to the street. Rex v. Jones, 1 Leach, C. C. 537; 2 East, P. C. 504.

A permanent building used and slept in only for a short time for the purpose of a fair, may be treated as the dwelling-house of the person so occupying it, though unoccupied the rest of the year. Rex v. Smith, 1 M. & Rob. 256—Park.

A burglary committed in a banker's shop, in which no person slept, but to which there was a communication by a trap-door and a ladder from the upper rooms of the house, in which only a weekly workman Friday night, with intent to enter | and his family lived by the permis-

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sion of the three partners, who were owners of the whole house, may be laid to have been committed in the dwelling-house of these partners, they inhabiting it by means of their servant. Rex v. Stock, 2 Leach, C. C. 1015; R. & R. C. C. 185; 2 Taunt. 339.

A summer-house used occasionally for tea and retirement, within the same inclosure as the house, though at the distance of about half a mile, was a building within 4 Geo. 2, c. 32. Rex v. Norris, R. & R. C. C. 69. And see Rex v. Parker, 1 Martin, R. & R. C. C. 108.

Leach, C. C. 320, n.

A building within the same fence as the dwelling-house, and used with it as parcel of the dwelling-house, though it has no internal communication with the house but through an open passage, is parcel of the dwelling-house. Rex v. Hancock, R. & R. C. C. 170.

And such a building is equally part of the dwelling-house, though used partly for the separate business of the occupier of the dwellinghouse, and partly for a business in which he was a partner. Ib.

W. let part of his house, viz. a shop, passage, cellar, &c. to his son, who did not sleep therein, and there was a distinct entrance into the son's part, but his passage led to his father's cellars, and they were open to his father's part of the house. The shop was broken into, and the prisoner was convicted thereof:—Held. that by reason of the internal communication, the son's part continued part of the father's house, and therefore that was burglary. Rex v. Sefton, R. & R. C. C. 202.

A shop adjoining to a house, if under the same roof, and within the curtilage, is part of the dwellinghouse, although there is no internal communication between the shop and the house, and although no person sleeps in the shop. Rex v. Gibson, 1 Leach, C. C. 357; 2 East, P. C. 508.

therewith and under the same roof, will be deemed part of the dwelling-house, though it has a separate outer door, and no internal communication with the rest of the house. Rex v. Burrowes, 1 M. C. C. 274.

Where the owner of a house has never by himself, or by any of his family or servants, slept in the house, it is not his dwelling-house, so as to make the breaking in and stealing goods thereout burglary, though he has used it for his meals, and all the purposes of his business. Rex v.

Although a man leaves his house, and never means to reside in it again, yet, if he uses part of it as a shop, and lets a servant and his family live and sleep in another part of of it, for fear the place should be robbed, and lets the rest to lodgers, the habitation by his servant and family is an habitation by him, and the shop will be considered as part of the dwelling-house, so as to constitute the breaking thereof burglary. Rex v. Gibbons, R. & R. C. C. 442.

The prosecutor's house was at the corner of a street, and adjoining thereto was a workshop, beyond which a stable and a coach-house adjoined; all were used with the house, and had doors opening into a yard belonging to the house, which yard was surrounded by adjoining buildings, so as to be altogether an inclosed yard; the workshop had no internal communication with the house, and it had a door opening into the street; its roof was higher than that of the dwelling house: the street door of the workshop was broken open in the night:—Held, the workshop was parcel of the dwelling-house. Rex v. Chalking, R. & R. C. C. 334. The law laid down in this case and the six following cases is altered by 24 & 25 Vict.c. 96, s. 53.]

A garret made use of as a workshop, and rented with a sleeping-A room in a dwelling, occupied room by the week, is the mansion of the lodger, if the landlord does not sleep under the same roof. Rev v. Carrell, 1 Leach, C. C. 237; 2 East, P. C. 506.

Lofts over coach-houses and stables, converted into lodging-rooms, are the dwelling-houses of their inhabitants, if there is an outer door. Rex v. Turner, 1 Leach, C. C. 305; 2 East, P. C. 492.

An area gate, opening into the area only, is not part of the dwelling-house so as to make the breaking thereof burglary, if there is any door or fastening to prevent persons in the area from entering the house, although such door or fastening may not be secured at the time. Rex v. Davis, R. & R. C. C. 322.

A building used with and under the same roof with a dwellinghouse, but having no internal communication with it, although opening into an inclosed yard belonging to the house, and also into an adjoining street, may be parcel of the dwelling-house, so as to constitute the breaking and entering thereof a burglary. Rev v. Lithgo, R. & R. C. Č. 357.

The prisoner broke into a goosehouse opening into the prosecutor's yard, into which his house also opened; the yard was surrounded partly by other buildings of the homestead, and partly by a wall; some of the buildings had doors opening backwards, and there was a gate in one part of the wall opening upon a road; this goosehouse, was held part of the dwelling-house, so as to constitute the breaking thereof burglary. Rex v. Clayburn, R. & R. C. C. 360.

Buildings separated from dwelling-house by a public road, however narrow, will not be a parcel of the dwelling-house, so as to constitute the breaking thereof burglary, if there is no common fence or roof to connect them, although held by the same tenure, and although some of the offices necessary to the

although there be an awning extending therefrom to the dwelling-Rex v. Westwood, R. & R. C. C. 495.

But if such a building is made a sleeping place for any of the servants of the dwelling-house, it may be deemed a distinct dwelling-house.

#### What is not a Dwelling-house. 7.

A manufactory carried on in the centre building of a great pile, in the wings of which several persons dwelt, but having no internal communication with the same, though the roofs of all were connected, and the entrances of all were out of the same common inclosure:—Held, not a dwelling-house in which burglary could be committed. Rex v. Egginton, 2 East, P. C. 494, 666; 2 Leach, C. C. 913; 2 B. & P. 508.

A door which only forms part of the outward fence of the curtilage, and opens into no building but into the yard only, is not such a part of the dwelling-house as that the breaking thereof will constitute Rex v. Bennett, R. & R. burglary. C. Č. 289.

Where the prosecutor left his house without any intention of living in it again, and intending to use it as a warehouse only; though he had persons (not of his family) to sleep in it, to guard the property: -Held, that it could not be considered as the dwelling-house of the prosecutor, so as to support a conviction for stealing therein. Rex v. Flannagan, R. & R. C. C. 187.

The owner of a house puts a person into it to sleep there at nights till he can get a tenant, in order to protect some furniture there, which he had purchased of the last tenant, which servant had so slept there for three weeks before, but the owner never intended to inhabit it himself: —Held, that a thief could not be convicted of stealing goods in the dwelling house of such owner to the dwelling-house adjoin thereto, and | value of 40s. within 12 Anne, c. 8.

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Rex v. Davis, 2 East, P. C. 499; 2 Leach, C. C. 876.

Or if the owner of a house has no intention of residing in it himself, it cannot be considered his dwelling-house, although his servant sleeps in it every night, if his sleeping there be merely to protect the furniture. *Ib*.

A house into which the owner has only removed his goods, but has not slept in it, is not his dwelling-house as to burglary. Rex v. Thompson, 2 Leach, C. C. 771; 2

East, P. C. 498.

A nocturnal breaking into a house of which the owner has no farther taken possession than by depositing in it sundry articles of merchandise, neither he nor any servant of his having slept in it, is not burglary, for it caunot be considered as the dwelling-house of the owner. *Rex* v. *Harris*, 2 Leach, C. C. 701; 2 East, P. C. 498.

A house under repair, but not inhabited, is not the dwelling-house of the owner, though part of his property is deposited therein. Rev. Lyons, 1 Leach, C. C. 185; 2 East, P. C. 497, differently reported: S. P., Rev. v. Fuller, 1 Leach, C. C. 186, n.

A porter lying in a warehouse does not make it a dwelling-house. Rex v. Smith, 2 East, P. C. 497; 2 Leach, C. C. 1018, n. And see Rex v. Brown, 2 East, P. C. 501; 2 Leach,

C. C. 1018, n.

On the trial of an indictment for burglary, it appeared that adjoining to the prosecutor's dwelling-house was a kiln, one end of which was supported by the end wall of the dwelling-house, and that adjoining to the kiln was a dairy, one end of which was supported by the end wall of the kiln. There was no internal communication from the dwellinghouse to the dairy, and the roofs of dwelling-house, kiln and dairy were of different heights:—Held, that the dairy was not part of the dwelling-house, and that a burglary could | s. 2.

not be committed by breaking into it. Reg. v. Higgs, 2 C. & K. 322—Wilde.

8. Breaking into Churches and Places of Divine Worship.

By 24 & 25 Vict. c. 96, s. 50, "whosoever shall break and en-"ter any church, chapel, meeting-"house or other place of divine "worship, and commit any fel-"ony therein, or being in any "church, chapel, meeting-house or "other place of divine worship shall "commit any felony therein and "break out of the same, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not "exceeding two years, with or with-" out hard labour, and with or with-"ont solitary confinement." (Previous provisions, 7 & 8 Geo. 4, c. 29, s. 10.)

By s. 57, "whosoever shall break "and enter any dwelling-house, "church, chapel, meeting-house or "other place of divine worship, or "any building within the curtilage, "school-house, shop, ware-house or "counting-house, with intent to com-"mit any felony therein, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding seven years "and not less than five years (27 & "28 Vict. c. 47), or to be imprison-"ed for any term not exceeding two "years, with or without hard la-"bour, and with or without solitary "confinement."

By 7 & 8 Geo. 4, c. 27, 23 Hen. 8, c. 1, was wholly repealed, and so much of 1 Edw. 6, c. 12, as related to this subject; and 24 & 25 Vict. c. 95, repealed 7 & 8 Geo. 4, c. 29, s. 16, and 7 Will. 4 & 1 Vict. c. 90, s. 2.

A dissenting meeting-house was not within 7 & 8 Geo. 4, c. 29, s. 10, which made it a capital offence to "break and enter any church or chapel, and steal therein." Rex v. Richardson, 6 C. & P. 335; S. P. Rex v. Warren, 6 C. & P. 335, n.

A prisoner was indicted under 7 & 8 Geo. 4, c. 29, s. 10, for breaking and entering a chapel, and stealing several fixtures, and a bell not fixed. The chapel was a Wesleyan chapel, and not a chapel of the Church of England:—Held, that the case must be confined to the act of simple larceny for stealing the bell. Rex v. Nixon, 7 C. & P. 442—Patteson and Gurney.

If a church tower is built higher than the church, and has a separate roof, but has no outer door, and is only accessible from the body of the church, from which it is not separated by any partition; this tower is a part of the church within 7 & 8 Geo. 4, c. 29, s. 10. Rex v. Wheeler,

3 C. & P. 585—Parke.

The provisions of 1 Edw. 6, c. 12, s. 10, were not confined to goods used for divine service; they extended to articles kept in the church to keep it in repair, and therefore a conviction on an indictment on that act, for stealing a snatch-block to raise weights in case the bells wanted repairing, and an iron pot for charcoal, used to air the vaults, was held right. Rex v. Rourke, R. & R. C. C. 386.

To warrant a conviction for breaking and entering a church under 7 & 8 Geo. 4, c. 29, s. 10, there must been a stealing therein of some chattel. Stealing a fixture was not sufficient. But if the stealing of fixtures was averred in such count, the prisoner might be convicted simply thereof under s. 44. Reg. v. Baker, 3 Cox, C. C. 581—Alderson.

The vestry of a church was broken open and robbed. It was formed out of what before had been a church porch, but had a door opening into the churchyard, which was broken the dwelling-house opened, the pump-yard being separated from fold-yard by a wall four feet high, in which there was a gate, the fold-yard having another gate leading

could only be unlocked from the inside:—Held, that this vestry was part of the fabric of the church, and within the meaning of an indictment for sacrilegiously breaking and entering the church. Reg. v. Evans, Car. & M. 298—Coleridge.

A. and B. were indicted for sacrilegiously breaking into a church and stealing a box and money:—Held, first, that the box (under the circumstances) was not affixed to the freehold, but was constructively in the possession of the vicar and church-wardens. Reg. v. Wortley, 1 Den. C. C. 162.

Held, secondly, that the property was rightly laid in the vicar and others, in their individual names.

Burglary may be committed in a church at common law. Reg. v. Baker, 3 Cox, C. C. 581—Alderson.

### 9. The Curtilage.

By 24 & 25 Vict. c. 96, s. 53, "no building, altogether within the "same curtilage with any dwell-"ing-house, and occupied therewith, "shall be deemed to be part of such "dwelling-house for any of the pur"poses of this act, unless there shall be a communication between such building and dwelling-house, eith"er immediate or by means of a "covered and inclosed passage lead"ing from the one to the other." (Former provision, 7 & 8 Geo. 4, c. 29, s. 14.)

On the trial of an indictment for breaking into a building within the curtilage, under 7 & 8 Geo. 4, c. 29, s. 14, it appeared, that the building was in the fold-yard of the prosecutor's farm; and that, to get from his dwelling-house to the fold-yard, it was necessary to pass through a yard called the pumpyard, into which the back-door of the dwelling-house opened, the pump-yard being separated from fold-yard by a wall four feet high, in which there was a gate, the fold-yard having another gate leading

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to fields on one side, a hedge, with a gate leading to the high road, on another, the other sides of the fold-yard being bounded by the farmbuildings and a continuous wall from the dwelling-house:—Held, that the building was within the curtilage. Reg. v. Gilbert, 1 C. & K. 84—Wightman.

#### 10. Ownership.

A gardener living in a house of his master, quite separate from the dwelling-house of his master, and the gardener had the entire control of the house he lived in, and kept the key:—Held, that, on an indictment for burglary, the gardener's house might be laid either as his or as his master's. Rex v. Rees, 7. C. & P. 568.

The apartments of lodgers will be considered as their respective dwelling-houses, if the owner of the premises does not sleep under the same roof. Rex v. Rogers, 1 Leach, C. C. 89; 2 East, P. C. 506.

A house, the whole of which is let out in lodgings, and has only one

outer door common to all its inmates, is the mansion house of its several inhabitants. Rex v. Trapshaw, 1 Leach, C. C. 427; 2 East,

P. C. 506, 780.

Though a servant lives rent-free for the purpose of his service in a a house provided for that purpose; yet, if he has the exclusive possession, and it is not parcel of any premises which his master occupies, it may be described as the house of the servant; especially if the house belongs not to his master, but to some person paramount to his master; as in the case of a toll-collector's house, occupied by the servant of the lessee of the tolls, for the purpose of collecting the tolls. Rex v. Camfield, 1 M. C. C. 42.

If two or more rent of the same owner different parts of the same house, so as to have amongst them the whole house, and the owner does not reserve or occupy any part

of it, the separate part of each may be described as the dwelling-house of each. Rex v. Bailey, 1 M. C. C. 23.

A house the joint property of partners in trade, and in which their business is carried on, may be described as the dwelling-house of all the partners, though only one of them resides in it. Rex v. Athea, 1 M. C. C. 329.

If a married woman takes a house, in which a burglary is committed, the house must be laid as the house of the husband, although she is living separate from him. Rex v. Smyth, 5 C. & P. 201—Tenterden.

The house of a husband in which he allows his wife to live separate from him, may be described in an indictment for burglary, as the house of the husband, although the wife lived there in adultery with another man, who paid the housekeeping expenses; and although the husband suspected a criminal intercourse between his wife and the other man when he allowed her to live separate. Rex v. Wilford, R. & R. C. C. 517.

Where a married woman lived apart from her husband, upon an income arising from property vested in trustees for her separate use:—Held, that a house which she had hired to live in was, in an indictment for burglary, properly described as her husband's dwelling-house, although she paid the rent out of her separate property, and the husband had never been in it. Rex v. French, R. & R. C. C. 491.

If a servant lives in a house of his master's at a yearly rent, the house cannot be described as the master's house, though it is on the premises where the master's business is carried on, and although the servant has it because of his services. Rex v. Jarvis, 1 M. C. C. 7.

Where a servant had part of a house for his own occupation, and the rest, in which a burglary is committed, is reserved by the proprietor for other purposes, the part reserved cannot be deemed part of the servant's dwelling-house. Rex v. Wilson, R. & R. C. C. 115.

And it will be the same if any other person has part of the house, and the rest is reserved. *Ib*.

If the owner of a house suffers a person to live in it rent-free, it may be stated, in an indictment for breaking into such house in the day-time, to be that person's house; such person being tenant at will. Rex v. Collett, R. & R. C. C. 498.

A burglary in the apartments of officers of a public company must be laid to be in the mansion-house of such company. Rex v. Hawkins,

2 East, P. C. 501.

So of the apartments of a college not occupied by the students, as the buttery. Rex v. Maynard, 2 East, P. C. 501.

Where one, under pretence of being robbed, forced the door of a guest's chamber in an inn, at night, and stole his goods:—Held, that the burglary must be laid to be in the dwelling-house of the innkeeper, and not of the guest. Rex v. Pros-

ser, 2 East, P. C. 502.

If a burglary is committed in the house of a trading company, in the house belonging to which an agent of the company resides, with his family, for the purpose of carrying on the business, it may be laid to be the dwelling-house of the agent, although the rent is paid and the lease is held by the company. Rex v. Margetts, 2 Leach, C. C. 930.

Though a servant lives rent-free in a honse belonging to an insurance company, and the company pays the taxes, and the company's business is carried on in the house, yet if the servant and his family are the only persons who sleep in the house, and the part in which the company's business is carried on is at all times open to those parts in which the servant lives, it may be stated as the servant's honse, though the only part entered by the thief was that

in which the company's business was carried on; and though the judges would not say that it might not have been described as the company's house, they thought it might, with equal propriety, be described as the house of the servant. Rex v. Witt, 1 M. C. C. 248.

If a house is let to A., and a ware-house under the same roof, and with an internal communication to the house, to A. and B.; the warehouse, in an indictment for burglary, cannot be described as the dwelling-house of A. Rex v. Jenkins, R. &

R. C. C. 244.

If the owner of a cottage lets one of his workmen, with his family, live in the cottage free of rent and taxes, and he lives there principally, if not wholly, for his own benefit, it may be described as the workman's dwelling-house in an indictment for burglary. Rex v. Jobling, R. & R. C. C. 525.

In an indictment for burglary in the workhouse of a poor law union, the workhouse being nnder 5 & 6 Will. 4, c. 69, s. 7, may be described as the dwelling-house of the guardians of the poor of that union. Semble, that the workhouse cannot be described as the dwelling-house of the master of the workhouse. Reg. v. Frowen, 4 Cox, C. C. 266—Platt.

A. was in the service of B. and lived in a house close to B.'s place of business. B. did not live in the house himself, but he paid the rent and taxes. A. paid nothing for his occupation. Part of the house was used as store-rooms for B.'s goods:

—Held, that this was the dwelling-house of B., and was improperly described in the indictment as the dwelling-house of A. Reg. v. Courtenay, 5 Cox, C. C. 218.

#### 11. Intent.

open to those parts in which the servant lives, it may be stated as the servant's honse, though the only part entered by the thief was that Digitized by Microsoft®

Breaking and entering a house in the night-time to recover tea, which had been seized, is no burglary, being intended for the benefit

of the supposed owner. Rex v.

Knight, 2 East, P. C. 510.

If several agree to commit a burglary, but one communicates the intent to an officer, that he may take the other two, and the officer is upon the watch accordingly; the person who has made that communication to the officer will not be particeps criminis in the burglary, although he is present when it is committed, and pretends to assist the other two, but in fact expedites their apprehension. Rev. v. Dannelly, R. & R. C. C. 310; 2 Marsh, 571.

Nor will it make any difference, although his object in detecting is to obtain for himself (by previous agreement with the officer) part of a reward that will be payable on conviction. *Ib*.

On an indictment for burglary, where any part of the person of the prisoner is within the dwellinghouse, no matter with what immediate intent, there is a sufficient entry to constitute the offence, and therefore, where the hand was proved to have been inside the house, it is immaterial whether it was there for the purpose of lifting up a window, or of abstracting property. But where no part of the prisoner's body is inside the premises, but he introduces an instrument within it for the mere purpose of effecting an entry, and not with any other object. that the entry is not complete. Reg. v. O'Brien, 4 Cox, C. C. 398 -Patteson.

# 12. Armed with Intent to Break or Enter.

By 24 & 25 Vict. c. 96, s. 58, "whosoever shall be found by night "armed with any dangerous or offensive weapon or instrument "whatsoever, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein, or "shall be found by night having in

"his possession without lawful ex-"cuse (the proof of which excuse "shall lie on such person) any pick-"lock key, crow, jack, bit, or other "implement of house-breaking, or "shall be found by night having "his face blackened, or otherwise "disguised with intent to commit "any felony, or shall be found by "night in any dwelling-house or " other building whatsoever with in-"tent to commit any felony there-"in, shall be guilty of a misde-"meanor." (Precisely similar to former enactments, 14 & 15 Vict. c. 19, s. 1.)

By s. 59, "whosoever shall be "convicted of any such misde"meanor as in the last preceding "section mentioned, committed aft"er a previous conviction, either "for felony or such misdemeanor, "shall on such subsequent convic"tion be liable, at the discretion of "the court, to be kept in penal "servitude for any term not ex"ceeding ten years and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour." (Former provision, 14 & 15 Vict. c. 19, s. 2.)

Keys are implements of house-breaking within the statute; for though commonly used for lawful purposes, they are capable of being employed for purposes of house-breaking, and it is a question for the jury whether the person found in possession of them by night had them without lawful excuse, and with the intention of using them as implements of housebreaking. Reg. v. Oldham, 2 Den. C. C. 472; 3 C. & K. 249; 16 Jur. 505; 21 L. J., M. C. 134; 5 Cox, C. C. 551.

Semble, per Maule, J., that the printed copy of the section of the statute is wrongly puuctuated, and that the word key is within the express terms of the statute. *Ib*.

"to commit any felony therein, or An intent to commit felony forms "shall be found by night having in no ingredient of the offence of be-

ing found by night in the possession of housebreaking instruments without lawful excuse. Reg. v. Bailey, Dears. C. C. 244; 17 Jur. 1106; 23 L. J., M. C. 13; 6 Cox, C. C. 241.

Where persons are charged, under 24 & 25 Vict. c. 96, s. 58, with being found by night armed with an offensive weapon, with intent to break and enter into a dwellinghouse or other building, and to commit a felony therein, the particular house or building must be specified in the indictment, and proof given of their intent to break and enter such house or building. Reg. v. Jarrald, 9 Cox, C. C. 307; L. & C. 301; 9 Jur., N. S. 629; 32 L. J., M. C. 258; 11 W. R. 787; 8 L. T., N. S. 515.

When several persons are found out together by night for the common purpose of housebreaking, and one only is in possession of the housebreaking implements, all may be found guilty of the misdemeanor of being found by night in possession of implements of housebreaking, without lawful excuse, under 24 & 25 Vict. c. 96, s. 58, for the possession of one is in such case the possession of all. Reg. v. Thompson, 21 L. T., N. S. 397—C. C. R.

### Stealing in a Dwelling-house.

The 7 & 8 Geo. 4, c. 27, repealed 23 Hen. 8, c. 1, and so much of 1 Edw. 6, c. 12, as related to house-breaking, and 39 Eliz. c. 15, 3 Will. & M. c. 9, 10 Will. 3, c. 12, vulgo 10 & 11 Will. 3, c. 23, and 12 Ann. st. 1, c. 7; and 24 & 25 Vict. c. 95, repeals 7 & 8 Geo. 4, c. 29, s. 12, 3 & 4 Will. 4, c. 34, 7 Will. 4 & 1 Vict. c. 90, s. 1, and 7 Will, 4 & 1 Vict. c. 86, s. 5.

A. was indicted for breaking and entering a dwelling-house, and stealing certain specified goods. At the time of breaking and entering, the goods named in the indictment were not in the house, but there were other goods there belonging to the the goods of M. It was proved by

The jury found that prosecutor. he was not guilty of the felony charged, but that he was guilty of breaking and entering the dwellinghouse of the prosecutor, and attempting to steal his goods therein: Held, that there was no attempt to commit the felony charged within 14 & 15 Vict. c. 100, s. 9, and therefore the verdict could not be sustained. Reg. v. M'Pherson, Dears. & B. C. C. 197; 3 Jur., N. S. 523; 26 L. J., M. C. 134; 7 Cox, C. C.

An indictment for feloniously breaking and entering a dwellinghouse, with intent feloniously to steal therein, and not for actually stealing, cannot be sustained, the felony created by 7 & 8 Geo. 4, c. 29, s. 12, being entering and stealing. Reg. v. Wenmouth, 8 Cox, C. C. 348—Keating.

A prisoner was indicted for breaking into the house of Elizabeth A. and stealing her goods. There was a second count laying the property. of the goods in the Queen. It was shown by proof of the record that the husband of Elizabeth A. had been convicted of felony, and it was also proved that he was in prison under his sentence, and that the articles stolen were his before his conviction, and had remained in the house from the time of his apprehension, and that the wife continued in the possession of the house and goods till they were stolen:— · Held, that the prisoner might be properly convicted of larceny on the second count, which laid the property of the goods in the Queen, although there had been no office found, and that he could not be convicted of housebreaking, as that part of the indictment which laid the goods and the house to be those of Elizabeth A. could not be supported. Reg. v. Whitehead, 9 C. & P. 429.

A. was charged with breaking into the house of K., and stealing

M. that K., his brother-in-law, had taken the house, and that M. (who lived on his property) carried on the trade of a silversmith for the benefit of K. and his family, having himself neither a share in the profits nor a salary. M. stated that he had authority to sell any part of the stock, and might take money from the till, but that he should tell K. of it; and that he sometimes bought goods for the shop, and sometimes K. did it:—Held, that M. was a bailee, and that the goods in the shop might properly be laid as his property. Reg. v. Bird, 9 C. & P. 44—Bosanquet.

# 14. In Schools, Shops, Warehouses or Counting-Houses.

By 24 & 25 Vict. c. 96, s. 56, "whosoever shall break and enter "any dwelling-house, school-house, "shop, warehouse or counting-house, and commit any felony therein, or, being in any dwelling-house, school-"house, shop, warehouse or count-"ing-house, shall commit any felony therein, and break out of the same, shall be guilty of felony." (Former provisions, 7 & 8 Geo. 4, c. 29, ss. 12, 15.)

By s. 57, "whosoever shall break "and enter any dwelling - house, "church, chapel, meeting-house, or "other place of divine worship, or "any building within the curtilage, "school-house, shop, warehouse, or "counting-house, with intent to commit any felony therein, shall be "guilty of felony."

Shops.]—A shop, to be within the 7 & 8 Geo. 4, c. 29, s. 15, and 7 Will. 4 & 1 Vict. c. 90, s. 2, must be a shop for the sale of goods, and a mere workshop will not be sufficient. Reg. v. Sanders, 9 C. & P. 79—Alderson.

An opening of a door in a shop under the same roof where the prisoner lived as a servant, for the purpose of committing a felony, was a

breaking and entering within 7 & 8 Geo. 4, c. 29, s. 12. Reg. v. Wenmouth, 8 Cox, C. C. 348—Keating.

On an indictment under 24 & 25 Vict. c. 96, s. 57, for feloniously breaking and entering a shop with intent to commit a felony; a prisoner may be found guilty of misdemeanor in attempting to commit that felony. Reg. v. Bain, 9 Cox, C. C. 98.

But a person who breaks into a blacksmith's shop and steals goods there, might be convicted of breaking into a shop and stealing goods, under 7 & 8 Geo. 4, c. 29, s. 15. Reg. v. Carter, 1 C. & K. 173—Denman.

Warehouses.]—A cellar used merely for the deposit of goods intended for removal and sale is a warehouse. Reg. v. Hill, 2 M. & Rob. 458—Rolfe.

Counting-houses. ] - A building formed partly of premises employed as chemical works; it was commonly called the machine-house, a weighing machine being there, where all the goods set out were weighed, and a book being kept there in which entries of the goods so weighed were made. The account of the time of the workmen employed in the works was kept in this place, the wages of the men were paid there; the books in which the entries of time and the payment of wages were entered were brought to the building for the purpose of making entries and paying wages, but at other times they were kept in what was called the office, where the general books and accounts of the concern were kept:— $\operatorname{Held}$ , that this building was properly described in an indictment as a countinghouse within 7 & 8 Geo. 4, c. 29, s. Reg. v. Potter, 2 Den. C. C. 15. 235; 3 C. & K. 179; T. & M. 561; 15 Jur. 498; 20 L. J., M. C. 170; 5 Cox, C. C. 187.

15. Parties Indictable.

A room door was latched, and one person lifted the latch and entered the room and concealed himself, for the purpose of committing a robbery there, which he afterwards accomplished. Two other persons were present with him at the time he lifted the latch, for the purpose of assisting him to enter, and screened him from observation by opening an umbrella:—Held, that the two were in law parties to the breaking and entering, and were answerable for the robbery which took place afterwards, though they were not near the spot at the time when it was perpetrated. Rex v. Jordan, 7 Car. & P. 432—Gaselee and Gurney.

Where, on an indictment for privately stealing in a shop, it appeared that there were several acting together, some in the shop, and some out, for the purpose of assisting those in the shop, and the property was stolen by the hands of one of those who were in the shop:—Held, that those who were on the outside were equally guilty as principals. Rex v. Gogerly, R. & R. C. C. 343.

Upon an indictment against a party as an accessory after the fact in robbery, proof of the prisoner's knowledge of the felony, together with proof of his aiding the principal in disposing of the fruits of the robbery, is sufficient evidence of comforting and assisting, to support the indictment. Reg. v. Butterfield, 1 Cox, C. C. 39—Maule.

#### 16. Indictment.

A house may be described as in the possession of the actual occupier, though his possession is wrongful. Rex v. Wallis, 1 M. C. C. 344.

A prisoner was indicted for burglary in the dwelling-house of B. B. worked for W., who did carpenter's work for a public company, and put B. into the house, which belonged to the company, to take care of it, and some mills adjoin-

ing. B. received no more wages after than before he went to live in the house:—Held, not rightly laid. Rev v. Rawlins, 7 C. & P. 150—Gaselee.

An indictment for burglary stating in one count that the prisoner "did break to get out," and in another that he did break and get out, was sufficient, since the 7 & 8 Geo. 4, c. 29, s. 11, which used the words break out. Rex v. Compton, 7 C. & P. 139—Vaughan and Patteson.

An indictment on 7 Will. 4 & 1 Vict. c. 86, s. 2, for the capital offence of burglary and striking, must have charged both the burglary and the striking, and the proof must correspond with the indictment. Reg. v. Parfitt, 8 C. & P. 288—Alder-

A. was indicted for a burglary in the house of S. W., and striking D. James. The burglary was proved as laid, but the person struck was D. Jones:—Held, that the prisoner must be acquitted of the capital charge, and convicted of burglary only. *Ib*.

It is sufficient in an indictment for burglary to allege that the offence was committed burglariously, without stating the time at which the offence was committed, or even that it was done in the night time. Reg. v. Thompson, 2 Cox, C. C. 445—Patteson. Contrá Rex v. Waddington, 2 East, P. C. 513.

It must be alleged and proved, either that a felony was committed in the dwelling-house, or that the party broke and entered with intent to commit some felony within the same. Rex v. Dobbs, 2 East, P. C. 513.

And whatever be the felony really intended, the same must be laid in the indictment, and proved agreeably to the fact. Rex v. Vandercomb, 2 East, P. C. 514, 517; 2 Leach, C. C. 708.

belonged to the company, to take But the same fact may be laid care of it, and some mills adjoin-with several intents. Rev v. Thomp-

son, 2 East, P. C. 515; 2 Leach,

C. C. 1105, n.

An indictment for burglary, charging in one count an intent to steal the goods of the owner, and in another an intent to murder him, is good, for it is the same fact and evidence, only laid in different ways. Ib.

The name of the owner of the house is essential in an indictment for burglary, and for stealing in the dwelling-house. Rex v. White, 1 Leach, C. C. 252; 2 East, 513,780; S. P. Rex v. Woodward, 1 Leach,

C. C. 253, n.

A corporation must prosecute in its corporate name; and the addition of such a name as a description of the persons of which the corporation is composed is not sufficient in an indictment. Rex v. Patrick, 1 Leach, C. C. 253; 2 East, P. C. 1059.

An indictment for burglariously breaking and entering the house of A., with intent to steal the goods of B., is bad, if no person of that name had any property in the house. Rex v. Jenks, 2 Leach, C. C. 774;

2 East, P. C. 514.

An indictment alleging that J. F., late of the parish of F., in the county of M., with force and arms, at the parish aforesaid, in the county aforesaid, the dwelling-house of the guardians of the poor of the P. Union, there situate, feloniously did break and enter, is a sufficient description of the situation of the work-house, the word, "there situate," referring not to the union, but to the parish before mentioned. Reg. v. Frowen, 4 Cox, C. C. 266—Platt.

It is sufficient to allege that the burglary was committed at a place, naming it, e. g., "at Norton-juxta-Kempsey, in the county aforesaid," without stating the place to be a parish, vill, chapelry, or the like. Reg. v. Brookes, Car. & M. 544—Patteson.

An indictment for breaking into drews, Car. & M. 121—Coleridge.

a warehouse, and stealing goods, stated the offence to have been committed in "the parish of St. Peter the Great, in the county of W." The only part of the parish of St. Peter the Great is in the county of W.:—Held, that indictment could not be supported for the breaking into the warehouse, but that it was sufficient for the larceny; and that, to be good as to the breaking, it should have charged the offence to have been committed "in that part of the parish of St. Peter the Great which lies within the county of W." Ib.

An indictment for burglary charged the prisoner with breaking, in the night-time, into the dwelling-house of E. B. " with intent the goods and chattels in the same dwelling-house then and there being feloniously and burglariously to steal, and stealing the goods of E. B." It was proved that the house was that of E. B., but that the goods the prisoner stole were the joint property of E. B. and two others:—Held, that, if it was proved that the prisoner broke into the house of E. B. with intent to steal the goods there generally, that would be sufficient to sustain the charge of burglary contained in the indictment, without proof of an intent to steal the goods of the particular person whose goods the indictment charged that he did steal. Reg. v. Clarke, 1 C. & K. 421—Coleridge.

An indictment for house-breaking, after charging the breaking and entering in the usual form, charged that the prisoner "forty-two pieces of the current gold coin of this realm, called sovereigns, of the value of 42*l*., in the same dwelling house then and there being found, then and there feloniously did steal and carry away," is good, and the words "then and there," in the last allegation, are sufficient without the words "in the same dwelling-house" being added to them. Reg. v. Andrews, Car. & M. 121—Coleridge

An indictment which charges that the prisoner unlawfully broke and entered the dwelling-house of R. P., "with intent the goods and chattels in the dwelling-house then and there being then and there feloniously to steal, take and carry away," is good, although it does not state whose goods the prisoner intended to steal. Reg. v. Lawes, 1 C. & K. 62—Erskine.

The alterations made in the law with respect to burglary, by 7 Will. 4 & 1 Vict. c. 86, as to the hours, and as to the punishment, did not make it necessary for an indictment to that offence to conclude contra forman statuti, as the alteration with respect to the hours did not alter the offence, and the mere diminution of the punishment did not make that conclusion necessary. Reg. v.Polly, 1 C. & K. 77—Erskine.

#### 17. Evidence and Trial.

On an indictment for burglary by breaking into a house in the night-time, and stealing to the value of 51. or more, the prisoner might be convicted of burglary, or of house-breaking, under 7 & 8 Geo. 4, c. 29, s. 12, or of stealing in a dwelling-house to the value of 5l. Rex v. Compton, 3 C. & P. 418— Gaselee.

On an indictment for burglary, the prisoner may be acquitted of the breaking, and found guilty of stealing in the dwelling-house. Rex v. Withal, 1 Leach, C. C. 88; 2

East, P. C. 515, 517.

If a prisoner is charged with a burglary and stealing the goods, the prosecutor, on failing to prove that these facts were committed on the day laid in the indictment, cannot be admitted to prove that the larceny was committed on a prior day. Rex v. Vandercomb, 2 Leach, C. C. 708; 2 East, P. C. 519.

On an indictment for burglariously breaking and entering a dwelling-house, (omitting the words

and there stealing goods therein, the prisoner may be well convicted of the burglary if the larceny be proved: secus if not. Rex v. Furnival, R. & R. C. C. 445.

Upon an indictment for burglary and larceny against two, one may be found guilty of the burglary and larceny, and the other of the larceny Rex v. Butterworth, R. & R. only. C. C. 520.

When the felony is laid to constitute the burglary, an acquittal of the burglary is an acquittal of stealing in the dwelling-house. Rex v. Comer, 1 Leach, C. C. 36.

Where a party is indicted both for burglary and feloniously stealing in the dwelling-house, and is acquitted of the burglary, but found guilty of the stealing, the verdict should be entered thus: say not guilty of breaking and entering the dwelling-house in the night, but guilty of stealing the (property) in the dwelling-house." Rex v. Hungerford, 2 East, P. C. 518; 1 Leach, C. C. 88.

On a charge of burglary, possession by the prisoners of part of the stolen property very soon after the burglary, with an account given of it not reasonable or credible, is sufficient primâ facie evidence, without express evidence to falsify it. It is so, however, only if, upon all the circumstances in the case, the account given is not reasonably credible. Reg. v. Exall, 4 F. & F. 922—Pollock.

Upon a trial for breaking into a booking-office at a railway station, evidence was admitted that the prisoners had, on the same night, broken into three other bookingoffices belonging to three other stations on the same railway, the four cases being all mixed up together. Reg. v. Cobden, 3 F. & F. 833— Bramwell. See Reg. v. Rearden, 4 F. & F. 76—Willes.

In an indictment for burglary, the entry was proved to have been "with intent to steal") and then effected by breaking open a window

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at the back of a house:—Held, that the correspondence of the prisoner's shoe with an impression in the front garden, not proved to have been made during the night, was not any evidence to go to the jury to show a connexion with such entry. v. Coots, 2 Cox, C. C. 188—Pollock.

On the night following the commission of a burglary, two boys were found concealed in a cornchest in an open gig-house with which they were not in any way connected, and half a mile from the house of the prosecutor. Outside the corn-chest was found some of the stolen property, and on the loft over the gig-house was found another portion of the stolen property: —Held, that there was no evidence to go to the jury of possession by the boys of any of the stolen articles. Ib.

#### IX. Coining.

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#### 1. Statutes.

2 & 3 Will. 4, c. 34, repealed 8 & 9 Will. 3, c. 26, and 15 Geo. 2, c. 28, 11 Geo. 3, c. 40, 37 Geo. 3, c. 126, and 24 & 25 Vict. c. 95, s. 1, repeals 2 & 3 Will, 4, c. 34; but s. 2 reserves repeal of enactments extending to the colonies.

The 16 & 17 Vict. c. 48, "ex-"tends the punishment of offences " committed against the coinage of "the realm to the colonies."

The 24 & 25 Vict. c. 99, "is the "act of 1861, consolidating the " statute law of the United King-"dom against offences relating to "the coin, and which, by s. 43, "commenced and took effect on the "1st November, 1861."

### 2. Interpretation.

Current Gold and Silver Coin.]-By s. 1, "in the interpretation of "and for the purposes of the act, "the expression, 'the Queen's cur-"rent gold or silver coin' shall in-"clude any gold or silver coin coin-"ed in any of her Majesty's mints, " or lawfully current, by virtue of "any proclamation or otherwise, in "any part of her Majesty's domin-"ions, whether within the United "Kingdom or otherwise.

CopperCoin.]—"And the ex-"pression 'the Queen's copper coin' "shall include any copper coin and "any coin of bronze or mixed metal "coined in any of her Majesty's "mints, or lawfully current by vir-"tue of any proclamation or other-"wise, in any part of her Majesty's "said dominions."

False or Counterfeit Coin. ]-"And "the expression false or counter-"feit coin, resembling or apparent"Iy intended to resemble or pass for any of the Queen's current gold or silver coin,' shall include any of the current coin which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble or be apparently intended to resemble or pass for any of the Queen's current coin of a higher denomination."

Current Coin.]—"And the ex"pression the Queen's current coin'
"shall include any coin coined in
"any of her Majesty's mints, or
"lawfully current, by virtue of any
"proclamation or otherwise, in any
"part of her Majesty's said domin"ions, and whether made of gold,
"silver, copper, bronze, or mixed
"metal."

What Shall be Possession. ]—" And "where the having any matter in "the custody or possession of any "person is mentioned in this act, it "shall include, not only the having "of it by himself in his personal "custody or possession, but also the "knowingly and wilfully having it "in the actual custody or posses-" sion of any other person, and also "the knowingly and wilfully hav-"ing it in any dwelling-house or "other building, lodging, apart-"ment, field or other place, open "or inclosed, whether belonging to " or occupied by himself or not, and "whether such matter shall be so "had for his own use or benefit or "for that of any other person."

The defendant was indicted for obtaining a die impressed as a sov-

ereign.

The 24 & 25 Vict. c. 99, s. 24, makes it a felony to have in custody, or possession (inter alia), a die impressed with the apparent resemblance of both or either of the sides of any of the Queen's current gold or silver coin, without lawful authority or excuse, (the proof whereof shall lie on the accused.)

Held, first, that an indictment under this section should allege possession without lawful authority or excuse, but that an indictment which charged possession without lawful excuse was sufficient, as excuse would include authority.

Secondly, that the words "the proof whereof shall lie on the accused," only shift the burden of proof, and do not alter the char-

acter of the offence:

That the fact that the mint authorities, upon information forwarded to them, gave authority to the die-maker to make the die, and that the police gave permission to him to give the die to the prisoner who ordered him to make, did not constitute lawful authority or excuse for prisoner's possession of the die. Reg. v. Harvey, 11 Cox. C. C. 662.

#### 3. What is Coining.

By 24 & 25 Vict. c. 99, s. 2, "whosoever shall falsely make or "counterfeit any coin resembling or "apparently intended to resemble "or pass for any of the Queen's cur-"rent gold or silver coin, shall, in "England and Ireland, be guilty "of felony, and in Scotland of a "high crime and offence, and being " convicted thereof, shall be liable, "at the discretion of the court, to " be kept in penal servitude for life, " or for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not. "exceeding two years, with "without hard labour, and with or "or without solitary confinement." (Former provision, 2 & 3 Will. 4, c. 34, s. 3.

By s. 13, "whosoever shall, with "intent to defraud, tender, utter, or "put off, as or for any of the Queen's "current gold or silver coin, any "coin not being such current gold "or silver coin, or any medal or "piece of metal or mixed metals "resembling in size, figure, and col-"our the current coin as or for "which the same shall be so ten-

"dered, uttered, or put off, such | "coin, medal, or piece of metal or " mixed metals so tendered, uttered, "or put off being of less value than "the current coin as or for which "the same shall be so tendered, ut-"tered or put off, shall, in England "and Ireland, be guilty of a mis-"demeanor, and in Scotland of a " crime and offence, and being con-"victed thereof, shall be liable, at "the discretion of the court, to be "imprisoned for any term not ex-"ceeding one year, with or without "hard labour, and with or without "solitary confinement."

On an indictment under 2 & 3 Will. 4, c. 34, s. 7, for uttering a piece of false and counterfeit coin, apparently intended to resemble and pass for a piece of the Queen's good and legal current coin, it is a question for the jury whether the coin produced supported the indictment, and if they should be of opinion that the coin was not intended by the maker to pass as good coin, they should acquit. Reg. v. Byrne, 6 Cox, C. C. 475. (Ir.) C. C. R.

A person was indicted for uttering a counterfeit coin, intended to resemble and pass for a groat. -All the witnesses for the prosecution, except the inspector of coin for the mint, called it a fourpenny piece. The inspector called it a great, and said he believed that it had that name from the earliest period. added, that the original groat of Edward the Third's reign was larger and heavier than the coin in question; and that, in the Queen's proclamation, these coins were called both groats and fourpenny-The proclamation was not pieces. produced, and the inscription on the coin itself was fourpence:—Held, that if the jury, from their own knowledge of the English language without considering any evidence at all, was of opinion that a groat and fourpenny-piece were the same, prisoner was rightly indicted, and might be convicted. Reg. v. Con-

nell, 1 C. & K. 190 – Maule and Erskine.

A person was indicted for uttering a medal resembling in size, figure, and colour one of the Queen's current gold coins, called a half sovereign. At the trial the medal was produced by a witness, who stated that it was the same in diameter as a half sovereign, and somewhat similar in colour; that on the obverse was the head of the Queen similar to that on a half sovereign, but that the legend was different; when about to describe the reverse, the coin accidentally dropped and The medal had not been was lost. shewn to the jury, and secondary evidence was not given of what was on the reverse:—Held, that there was evidence to go to the jury that the medal resembled in figure a current coin. Reg. v. Robinson, L. & C. 604; 10 Cox, C. C. 107; 11 Jur., N. S. 452; 34 L. J., M. C. 176; 13 W. R. 727; 12 L. T., N. S. 501.

It is not necessary, to constitute the offence of coining, that there should be an impression on the counterfeit, if it resembles the common worn coin. Rex v. Welch. 1 East, P. C. 87, 164; 1 Leach C. C. 364.

A counterfeit shilling produced in evidence, although it is quite smooth, and there is no impression of any sort discernible on it, will support an indictment for counterfeiting to the similitude of the legal coin. *Ib*.

To make a round blank like the smooth shillings in circulation, the original impression on which has been effaced by wear, is counterfeiting to the likeness and similitude of the good legal and current coin of the realm called a shilling. Rex v. Wilson, 1 Leach, C. C. 285.

It is a question of fact whether or not counterfeit coin was made to resemble the real coin. Rex v. Welch, 1 East, P. C. 87, 164; 1 Leach, C. C. 364.

Proof that a man occasionally

visited coiners; that the rattling of money was occasionally heard with them; that he was seen counting something, as if it was money, when he left them; that on coming to their lodgings just after the apprehension he endeavored to escape, and was found to have bad money about him; is not sufficient evidence to implicate him as counselling, procuring, aiding, and abetting the coin-Rex v. Isaacs, 1 Russ. C. & M. 62—Bayley.

#### 4. Colouring.

By 24 & 25 Vict. c. 99, s. 3, "whosoever shall gild or silver, or "shall, with any wash or materials "capable of producing the colour or "appearance of gold or silver, or by "any means whatsoever, wash, case "over, or colour any coin whatso-"ever, resembling or apparently in-"tended to resemble or pass for any " of the Queen's current gold or sil-"ver coin; or shall gild or silver, "or shall, with any wash or mate-" rials capable of producing the col-"our or appearance of gold or of "silver, or by any means whatsoev-"er, wash, case over, or colour any "piece of silver or copper, or of "coarse gold or coarse silver, or of " any metal or mixture of metals re-"spectively, being of a fit size and "figure to be coined, and with in-"tent that the same shall be coined "into false and counterfeit coin re-"sembling or apparently intended "to resemble or pass for any of the "Queen's current gold or silver "coin; or shall gild, or shall, with " any wash or materials capable of " producing the colour or appearance " of gold or by any means whatsoev-"er, wash, case over or colour any of " the Queen's current silver coin, or "file or in any manner alter such "coin, with intent to make the same "resemble or pass for any of the "Queen's current gold coin; or "shall gild or silver, or shall with "any wash or materials capable of "producing the colour or appear-

"ance of gold or silver, or by any "means whatsoever, wash, case "over, or colour any of the Queen's " current copper coin, or file or in any "manner alter such coin, with in-"tent to make the same resemble "or pass for any of the Queen's "current gold or silver coin, shall, "in England and Ireland, be guilty "of felony, and in Scotland of a " high crime and offence, and, being "convicted thereof, shall be liable, "at the discretion of the court, to "be kept in penal servitude for life, "or for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-" out hard labour, and with or with-"out solitary confinement." (Former provision, 2 & 3 Will. 4, c. 34. s. 4.)

An indictment charging the gilding sixpences with materials capable of producing the colour of gold, is good, and supported by proof of colouring sixpences with gold. Reg. v. Turner, 2 M. C. C. 42.

Preparing blanks with such materials, as when rubbed would make them resemble the real coin, was a colouring within 8 & 9 Will. 3, c. 26, before the resemblance has been produced by such friction. Rex v. Case, 1 East, P. C. 165; 1 Leach, C. C. 154, n.

So, bringing to the surface the latent silver in a blank of mixed metal, by dipping it in aquafortis which corrodes the base metal, was a colouring within that statute. Rex v. Lavy, 1 East, P. C. 166; 1 Leach, C. C. 153. And see Rex v. Harris, 1 Leach, C. C. 135.

#### 5. Impairing or Lightening Gold or Silver Coin.

By 24 & 25 Viet. e. 99, s. 4, " who-"soever shall impair, diminish or "lighten any of the Queen's current "gold or silver coin, with intent "that the coin so impaired, dimin-" ished or lightened may pass for the "Queen's current gold or silver coin,

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"shall, in England and Ireland, be "guilty of felony, and in Scotland "of a high crime and offence, and being convicted thereof shall be "liable, at the discretion of the "court, to be kept in penal servitude for any term not exceeding "fourteen years, and not less than "five years (27 & 28 Vict. c. 47)," or to be imprisoned for any term "not exceeding two years, with or "without hard labour, and with or without solitary confinement." (Former provision, 2 & 3 Will. 4, c. 34, s. 5.)

# 6. Buying or selling Counterfeit Coin.

By 24 & 25 Vict. c. 99, s. 6, "whosoever, without lawful author-"ity or excuse (the proof whereof "shall lie on the party accused), " shall buy, sell, receive, pay, or put "off, or offer to buy, sell, receive, "pay, or put off, any false or coun-"terfeit coin, resembling or appar-"ently intended to resemble or pass "for any of the Queen's current " gold or silver coin, at or for a low-"er rate or value than the same im-"ports or was apparently intended "to import, shall, in England and "Ireland, be guilty of felony, and "in Scotland of a high crime and "offence, and being convicted there-" of shall be liable, at the discretion "of the court, to be kept in penal "servitude for life, or for any term "not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour, and with or without solitary "confinement;"

"And in any indictment for any such offence, it shall be sufficient to allege that the party accused did buy, sell, receive, pay, or put off, or did offer to buy, sell, receive, pay, or put off, the false or counterfeit coin at or for a lower rate or value than the same imports or was apparently intended to im-

"port, without alleging at or for what "rate, price or value the same was "bought, sold, received, paid, or "put off, or offered to be bought, "sold, received, paid, or put off." (Former provisions, 8 & 9 Will. 3, c. 26, s. 6, and 2 & 3 Will. 4, c. 34, s. 6.)

An indictment on 8 & 9 Will. 3, c. 26, s. 6, stated that five counterfeit shillings were paid and put off for two shillings; the proof was that five bad shillings were sold for half-a-crown:—Held, that the variance was fatal, as it was a contract which must be correctly proved as laid. Rex v. Joyce, Car. C. L. 184—

Thompson and Heath.

In an indictment for putting off counterfeit money, at a lower rate than its denomination imports, it was alleged that the prisoner put off a counterfeit sovereign and three counterfeit shillings for the sum of five shillings; the proof was, that the prisoner said he would let the witness have a bad sovereign at four shillings, and three bad shillings at one shilling, and the witness paid for them with two good half-crowns:—Held, that this proof supported the allegation. Rex v. Hedges, 3 C. & P. 410—Vaughan.

Where, on a bargain for the sale of counterfeit money, the price had been agreed upon and the prisoner had produced the coin, but the complete transfer was prevented by the appearance of the police officers:

—Held, that it did not amount to a putting off within 8 & 9 Will. 3, c. 26. Rex v. Wooldridge, 1 Leach, C. C. 307; 1 East, P. C. 169.

An indictment on 8 & 9 Will. 3, c. 26, s. 6, for putting off bad money, must have stated that it was "not cut in pieces." Rev v. Palmer, 1 Leach, C. C. 102.

In an indictment for putting off counterfeit money, the names of the persons to whom it was put off ought to be set out. *Anon.* 1 East, P. C. 180—Holt.

# 7. Exchanging Coin at higher than its Value.

The exchanging guineas for banknotes, taking the guineas in such exchange at a higher value than they were current for by the king's proclamation, was not an offence against 5 & 6 Edw. 6, c. 19. (Repeated by 56 Geo. 3, c. 68.) Rev v. De Yonge, 14 East, 402.

# 8. Importing or Exporting Counterfeit Coin.

Importing. By 24 & 25 Viet. c. 99, s. 7, "whosoever, without "lawful authority or excuse (the "proof whereof shall lie on the "party accused), shall import or "receive into the United Kingdom, "from beyond the seas, any false or "counterfeit coin resembling or ap-"parently intended to resemble or "pass for any of the Queen's cur-"rent gold or silver coin, knowing "the same to be false or counter-"feit, shall, in England and Ireland "be guilty of felony, and in Scot-"land of a high crime and offence, "and being convicted thereof, shall " be liable, at the discretion of the "court, to be kept in penal servi-"tude for life, or for any term not "less than five years (27 & 28 Vict. "c. 47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment." (Former provision, 2 & 3 Will. 4, c. 34, s. 6.)

Exporting.]—By s. 8, "whose"ever, without lawful authority or
"excuse (the proof whereof shall
"lie on the party accused), shall
"export, or put on board any ship,
"vessel or boat for the purpose of being exported from the United Kingdom, any false or counterfeit coin,
"resembling or apparently intended
to resemble or pass for any of the
"Queen's current coin, knowing the
"same to be false or counterfeit,
"shall, in England and Ireland, be

"guilty of a misdemeanor, and be"ing convicted thereof shall be lia"ble, at the discretion of the court,
"to be imprisoned for any term not
"exceeding two years, with or
"without hard labour, and with or
"without solitary confinement."

# 9. Defacing Gold, Silver or Copper Coin.

By 24 & 25 Vict. c. 99, s. 16, "whosoever shall deface any of the "Queen's current gold, silver or copper coin, by stamping thereon any names or words, whether such coin shall or shall not be thereby diminished or lightened, shall, in England and Ireland be guilty of misdemeanor, and in Scotland of a crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour." (Former provision, 16 & 17 Vict. c. 102, s. 1.)

By s. 17, "no tender of payment " in money made in any gold, silver "or copper coin so defaced by "stamping as in the last preceding "section mentioned shall be allow-"ed to be a legal tender; and who-"soever shall tender, utter or put "off any coin so defaced, shall on "conviction thereof before two jus-"tices, be liable to forfeit and pay "any sum not exceeding 40s.: pro-"vided that it shall not be lawful "for any person to proceed for any " such last-mentioned penalty with-"out the consent, in England or "Ireland, of her Majesty's attorney-"general for England or Ireland "respectively, or in Scotland of the "lord advocate." (Former. provision, 16 & 17 Viet. c. 102, s. 2.)

### 10. Testing Genuineness of Gold or Silver Coin.

By 24 & 25 Vict. c. 99, s. 26, "where any coin shall be tendered "as the Queen's current gold of sil-"ver coin to any person who shall "suspect the same to be diminish-

"ed otherwise than by reasonable "wearing, or to be counterfeit, it "shall be lawful for such person to "cut, break, bend or deface such "coin, and if any coin so cut, brok-"en, bent or defaced shall appear "to be diminished otherwise than "by reasonable wearing, or to be "counterfeit, the person tendering "the same shall bear the loss there-"of; but if the same shall be of due "weight, and shall appear to be "lawful coin, the person cutting, " breaking, bending or defacing the " same is hereby required to receive "the same at the rate it was coined "for; and if any dispute shall arise "whether the coin so cut, broken, "bent or defaced be diminished in "manner aforesaid, or conuterfeit, "it shall be heard and finally de-"termined in a summary manner "by any justice of the peace, who "is empowered to examine upon "oath as well the parties as any "other person, in order to the de-"cision of such dispute; and the "tellers at the receipt of her Maj-"esty's Exchequer, and their dep-" uties and clerks, and the receivers-"general of every branch of her "Majesty's revenue, are hereby re-"quired to cut, break, or deface, or "cause to be cut, broken or defaced, "every piece of counterfeit or un-"lawfully diminished gold or silver "coin which shall be tendered to "them in payment for any part of "her Majesty's revenue." (Former provision, 2 & 3 Will. 4, c. 34, s. 13.)

# 11. Counterfeiting and uttering Copper Coin.

Counterfeiting.]—By 24 & 25 Vict. c. 99, s. 14, "whosoever shall false-"ly make or counterfeit any coin, "resembling or apparently intended "to resemble or pass for any of the "Queen's current copper coin; and "whosoever, without lawful author-"ity or excuse (the proof whereof "shall lie on the party accused), "shall knowingly make or mend,

"or begin or proceed to make or "mend, or buy or sell, or have in "his custody or possession, any in-"strument, tool, or engine adapted "and intended for the counterfeit-"ing any of the Queen's current "copper coin; or shall buy, sell, "receive, pay, or put off, or offer "to buy, sell, receive, pay, "put off, any false or counter-" terfeit coin, resembling, or appar-"ently intended to resemble or pass "for any of the Queen's current "copper coin, at or for a lower rate " or value than the same imports, " or was apparently intended to im-"port, shall, in England and Ire-"land, be guilty of felony, and in "Scotland of a high crime and of-" fence, and being convicted thereof, "shall be liable, at the discretion " of the court, to be kept in penal " servitude for any term not exceed-"ing seven years, and not less than "five years (27 & 28 Vict. c. 47), " or to be imprisoned for any term "not exceeding two years, with or "without hard labour, and with " or without solitary confinement. Former provision, 2 & 3 Will. 4. c. 34, s. 12.)

Uttering.]—By s. 15, "whoso-" ever shall tender, utter or put off "any false or counterfeit coin, re-"sembling or apparently intended "to resemble or pass for any of "the Queen's current copper coin, "knowing the same to be false or "counterfeit, or shall have in his "custody or possession three or "more pieces of false or counterfeit "coin, resembling, or apparently "intended to resemble or pass for " any of the Queen's current copper "coin, knowing the same to be false "or counterfeit, and with intent to "utter or put off the same or any " of them, shall, in England and Ire-"land, be guilty of a misdemeanor, " and in Scotland of a crime and " offence, and being convicted there-" of, shall be liable, at the discretion " of the court, to be imprisoned for

"any term not exceeding one year, "with or without hard labour, and "with or without solitary confine-"ment."

Before these Enactments.]—Uttering or tendering in payment counterfeit copper money was not an indictable offence. Rex v. Cirwan, 1 East, P. C. 182.

### 12. Counterfeiting and uttering Foreign Coin.

Gold and Silver.]-By 24 & 25 Vict. c. 99, s. 18, "whosoever shall "make or counterfeit any kind of "coin, not being the Queen's cur-"rent gold or silver coin, but re-"sembling or apparently intended "to resemble or pass for any gold " or silver coin of any foreign prince, "state, or country, shall, in Eng-"land and Ireland, be guilty of fel-"ony, and in Scotland of a high crime "and offence, and being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept "in penal servitude for any term "not exceeding seven years, "not less than five years (27 & 28 "Viet. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour, and with or without soli-"tary confinement." (Former provision, 37 Geo. 3, c. 126, s. 2.)

By s. 19, "whosoever, without "lawful authority or excuse (the "proof whereof shall lie on the "party accused), shall bring or re-"ceive into the United Kingdom "any such false or counterfeit coin, "resembling or apparently intended "to resemble or pass for any gold "or silver coin of any foreign " prince, state, or country, knowing "the same to be false or counter-"feit, shall, in England and Ireland, "be guilty of felony, and, being "convicted thereof, shall be liable, "at the discretion of the court, to "be kept in penal servitude for any "term not exceeding seven years, "and not less than five years (27) "& 28 Vict. c. 47), or to be im-"prisoned for any term not exceed-"ing two years, with or without "hard labour, and with or without "solitary confinement." (Former provision, 37 Geo. 3, c. 126, s. 3.)

Uttering.]—By s. 20, "whoso-"ever shall tender, utter, or put off "any such false or counterfeit coin, "resembling or apparently intended "to resemble or pass for any gold "or silver coin of any foreign "prince, state, or country, knowing "the same to be false or counter-"feit, shall, in England and Ire-"land, be guilty of a misdemeanor, "and being convicted thereof shall "be liable, at the discretion of the "court, to be imprisoned for any "term not exceeding six months, "with or without hard labour." (Former provision, 37 Geo. 3, c. 126, s. 4.)

Second and Third Offences. ]— By s. 21, "whosoever, having been "so convicted as in the last preced-"ing section mentioned, shall after-"wards commit the like offence of "tendering, uttering, or putting off "any such false or counterfeit coin " as aforesaid, knowing the same to "be false or counterfeit, shall, in "England and Ireland, be guilty " of a misdemeanor, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "imprisoned for any term not ex-"ceeding two years, with or with-"out hard labour, and with or " without solitary confinement; and "whosoever, 'having been so con-"vieted of a second offence, shall "afterwards commit the like offence " of tendering, uttering, or putting "off any such false or counterfeit "coin as aforesaid, knowing the "same to be false or counterfeit, "shall, in England and Ireland, be "guilty of felony, and in Scotland " of a high crime and offence, and, "being convicted thereof, shall be "liable, at the discretion of the

"court, to be kept in penal serv"itude for life, or for any term not
"less than three years; or to be
"imprisoned for any term not ex"ceeding two years, with or with"out hard labour, and with or
"without solitary confinement."

Foreign Copper Coin. ]-By s. 22, "whosoever shall falsely make or " counterfeit any kind of coin, not "being the Queen's current coin, "but resembling or apparently in-"tended to resemble or pass for any "copper coin, or any other coin "made of any metal or mixed met-"als of less value than the silver "coin of any foreign prince, state, " or country, shall, in England and "Ireland, be guilty of a misde-"meanor, and being convicted "thereof, shall be liable, at the dis-" cretion of the court, for the first "offence, to be imprisoned for any "term not exceeding one year, and " for the second offence, to be kept "in penal servitude for any term "not exceeding seven years, and "not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour, and with or without solitary "confinement." (Former provision, 43 Geo. 3, c. 139, s. 3.)

Unlawful Possession, ]—By s, 23, "whosoever, without lawful author-"ity or excuse (the proof whereof "shall lie on the party accused), "shall have in his custody or posses-"sion any greater number of pieces "than five pieces of false or coun-"terfeit coin, resembling or appar-"ently intended to resemble or pass "for any gold or silver coin of any "foreign prince, state, or country, "or any such copper or other coin "as in the last preceding section "mentioned, shall, on conviction "thereof before any justice of the " peace, forfeit and lose all such false "and counterfeit coin, which shall " be cut in pieces and destroyed by

order of justice, and shall for every "such offence forfeit and pay any " sum of money not exceeding 40s., "nor less than 10s. for every such "piece of false and counterfeit coin "which shall be found in the cus-"tody or possession of such person, " one moiety to the informer, and the "other moiety to the poor of the " parish where such offence shall be "committed; and in case any such "penalty shall not be forthwith "paid, it shall be lawful for any "such justice to commit the person "who shall have been adjudged to "pay the same to the common gaol " or house of correction, there to be "kept to hard labour for the space "of three months, or until such " penalty shall be paid." (Former provisions, 37 Geo. 3, c. 126, s. 6, and 43 Geo. 3, c. 139, s. 6.)

### 13. Implements of Coining.

By 24 & 25 Viet. c. 99, s. 24, "whosoever, without lawful au-"thority or excuse (the proof where-" of shall lie on the party accused), "shall knowingly make or mend, or "begin or proceed to make or mend, " or buy or sell, or have in his cus-"tody, or possession, any puncheon, " counter puncheon, matrix, stamp, "die, pattern, or mould in or upon "which there shall be made or im-"pressed, or which will make or "impress, or which shall be adapt-"ed and intended to make or im-" press, the figure, stamp, or appar-"ent resemblance of both or either "of the sides of any of the Queen's "current gold or silver coin, or of "any coin of any foreign prince, "state, or country, or any part or "parts of both or either of such "sides; or shall make or mend, or "begin or proceed to make or mend, " or shall buy or sell, or have in his "custody or possession, any edger, "edging or other tool, collar, in-"strument, or engine adapted and "intended for the marking of coin " round the edges with letters, grain-"ings, or other marks, or figures "apparently resembling those on "the edges of any such coin as in "this section aforesaid, knowing the " same to be so adapted and intend-"ed as aforesaid; or shall make or "mend, or begin or proceed to make " or mend, or shall buy or sell, or "have in his custody or possession, " any press for coinage, or any cut-"ting engine for cutting by force " of a screw or of any other contriv-"ance, round blanks out of gold, "silver, or other metal or mixture "of metals, or any other machine, "knowing such press to be a press "for coinage, or knowing such en-"gine or machine to have been "used, or to be intended to be used, " for or in order to the false making " or counterfeiting of any such coin "as in this section aforesaid, shall, "in England and Ireland, be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept in " penal servitude for life, or for any "term not less than five years (27 & "28 Vict. c. 47), or to be impris-"oned for any term not exceeding "two years, with or without hard "labour, and with or without soli-"tary confinement." (Former provisions, 2 & 3 Will. 4, c. 34, s. 10, and 8 & 9 Will. 3, c. 26.

A galvanic battery is a machine within the meaning of the 24 & 25 Vict. c. 99, s. 24. Reg. v. Gover, 9 Cox, C. C. 282—Chambers, C. S.

The prisoner employed a diesinker to make, for a pretended innocent purpose, a die calculated to make shillings. The die-sinker, suspecting fraud, informed the commissioners of the mint, and, under their directions, made the die, for the purpose of detecting the prisoner:—Held, that the die-sinker was an innocent agent, and the prisoner rightly convicted as a principal under 2 & 3 Will. 4, c. 34, s. 10. Reg. v. Bannen, 2 M. C. C. 309; 1 Č. & K. 295.

A., with the intent of coining counterfeit half dollars of Peru, the obverse of the coin. 1b.

procured dies in this country for stamping and imitating such coin. He was apprehended before he had obtained the metal and chemical preparations necessary for making counterfeit coin:—Held, that the procuring the dies was an act in furtherance of the criminal purpose, sufficiently proximate to the offence intended, and sufficiently evidencing the criminal intent to support an indictment founded on it for a misdemeanor, although the same facts would not have supported an indietment for attempting to make counterfeit coin. Reg. v. Roberts, Dears. C. C. 539; 1 Jur., N. S. 1094; 25 L. J., M. C. 17; 7 Cox, C. C. 39.

The jury also found that he intended to make only a few counterfeit coins in England, with a view merely of testing the completeness of the apparatus before he sent it out to Peru:—Held, that even to make a few coins in England with that object, would be to commit the offence of making counterfeit coins within the statute.

An indictment that the prisoner feloniously had in his possession a mould, "upon which mould were made and impressed the figure and resemblance" of the obverse side of a sixpence, is bad, as not sufficiently showing that the impression was on the mould at the time when the prisoner had it in his possession; but a fresh indictment with the words "then and there" before the words "made and impressed," is good. Reg. v. Richmond, 1 C. & K. 240; 1 Cox, C. C. 9—Rolfe.

Where a coining mould is made and impressed to resemble the obverse of a coin, which is partly defaced by wear, the indictment should be in the form above mentioned, as the words of the 2 & 3 Will. 4, c. 34, s. 10, as to moulds to resemble part of the obverse of a coin, relate to cases where several moulds put together would make

A first count charged the prisoners with having in their possession a mould intended to impress the stamp of the reverse side of a shilling; the second stated, that the mould was intended to impress the obverse side; the third stated, that it was intended to impress part or parts of the reverse side; and the fourth stated the same as to the obverse side. A verdict of guilty having been recorded, a motion was made in arrest of judgment, on the ground that the two last counts were bad for uncertainty, whereupon the judge directed another indictment to be preferred. The second indictment contained the two first counts of the previous one; a third and fourth stated, that the mould was intended to impress parts of the obverse and parts of the reverse sides; a fifth and sixth used the word "part" instead of parts. The prisoner pleaded autrefois convict. The twelve judges decided that the plea was bad, and confirmed the second conviction. Rex v. Phillips, 1 Jur., 427.

Where coining implements were found in the house occupied by a man, his wife, and a child ten years of age, the jury was directed to acquit the child of a felonious posses-Reg. v. Boober, 4 Cox, C. sion.

C. 272.

If coining implements are found in a house occupied by a man and his wife, the presumption is, that they are in possession of the husband alone: unless there are circumstances to shew that the wife was acting separately and without her husband's sanction, they cannot Ib.both be convicted.

The fact of a wife attempting to break up coining implements at the time of her husband's apprehension, if done with the object of screening him, is no evidence of a

guilty possession. Ib.

The prisoner was indicted for knowingly and without lawful ex-

session a mould on which were impressed the figure and apparent resemblance of the obverse side of a The mould was found half-crown. in the house of the prisoner, who had previously passed a bad halfcrown; but there was no evidence to shew that the half-crown had been in the mould:—Held, that there was sufficient evidence to go to the jury. Reg. v. Weeks, L. & C. 18; 8 Cox, C. C. 455; 7 Jur., N. S. 472; 30 L. J., M. C. 141; 9 W. R. 553; 4 L. T., N. S. 373.

On an indictment on 2 & 3 Will. 4, c. 34, s. 10, for the felony of making a mould "intended to make and impress the figure and apparent resemblance of the obverse side" of a shilling, it was sufficient to prove that the prisoner made the mould and a part of the impression though he had not completed the entire impression. Rex v. Foster, 7 C. & P. 495—Patteson.

To convict a prisoner under the 2 & 3 Will. 4, c. 34, s. 10, of the felony of having in his possession a mould, upon which was impressed the resemblance of the obverse side of a shilling, the jury must be satisfied that, at the time he had it in his possession, the whole of the obverse side of the shilling was impressed on the mould: a part is not sufficient. Ib.

On an indictment for having in possession a die made of iron and steel, proof of a die made of other material, or of both, will be sufficient; for it is immaterial to the offence of what the die is made. Rex v. Oxford, R. & R. C. C. 382.

Upon an indictment against a party under 2 & 3 Will. 4, c. 34, s. 10, for having in his possession a mould, upon which was made and impressed the figure, on one of the sides, of a shilling, it was not sufficient to shew that the prisoner had in his possession a mould, on one side of which there was a perfect impression, but without a channel cuse having in his custody and pos- through which the metal ran, unless it could also be shown that coin could be made by it. Reg. v. MacMillan, 1 Cox, C. C. 41—Maule.

A press for coinage was a tool or an instrument within that branch of the 8 & 9 Will. 3, c. 26, which made it treason to have the same knowingly in the party's custody. Rex v. Bell, 1 East, P. C. 169.

So having knowingly in possession a puncheon for the purpose of coining, though that alone, without the counter puncheon, would not make the figure. Rex v. Ridgelay, 1 East, P. C. 171; 1 Leach, C. C.

So a collar of iron, for graining the edges of counterfeit money, was an instrument, although it was to be used in a coining press. Moore, 2 C. & P. 235; 1 M. C. C. 122.

So a mould of lead, having the stamp of one side of a shilling, was a tool or an instrument. Rex v. Lennard, 2 W. Bl. 807; 1 Leach, C. C. 90; 1 East, P. C. 170.

It is a misdemeanor at common law to have tools for coining in possession with intent to use Rex v. Sutton, 1 East, P. C. 172.

### Unlawful possession of Base Coin, Filings, or Clippings.

By 24 & 25 Vict. c. 99, s. 5, "whosoever shall unlawfully have "in his custody or possession any "filings or clippings, or any gold "or silver bullion, or any gold or "silver in dust, solution, or other-"wise, which shall have been pro-"duced or obtained by impairing, "diminishing, or lightening any of "the Queen's current gold or silver "coin, knowing the same to have "been so produced or obtained, "shall, in England and Ireland, be "guilty of felony, and being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding seven years, "and not less than five years (27 & "28 Vict. c. 47), or to be impris- good, was no offence before 2 & 3

"oned for any term not exceeding "two years, with or without hard "labour, and with or without soli-"tary confinement."

By s. 11, "whosoever shall have "in his custody or possession three or more pieces of false or counter-"feit coin, resembling or appar-" ently intended to resemble, or pass "for any of the Queen's current gold or silver coin, knowing the "same to be false or counterfeit, "and with intent to utter or put off "the same or any of them, shall, in "England and Ireland, be guilty " of a misdemeanor, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for the "term of five years, or to be im-"prisoned for any term not exceed-"ing two years (27 & 28 Vict. c. "47), with or without hard labour, "and with or without solitary con-"finement." (Former provision, 2 & 3 Will. 4, c. 34, s. 8.)

In order to convict a person charged on 2 & 3 Will. 4, c. 34, s. 8, with having in his possession more than three pieces of counterfeit coin, with intent to utter them, it was not necessary that the possession should be an individual possession, but it was enough if the coin was in the possession of the person charged, or his immediate agent. Reg. v. Williams, Car. & M. 259—

Mirehouse, C. S.

Having a large quantity of counterfeit coin in possession, many of each sort being of the same date, and made in the same mould, and each piece being wrapped in a separate piece of paper, and the whole distributed in different pockets of the dress, is some evidence that the possessor knew that the coin was counterfeit, and intended to utter Reg. v. Jarvis, Dears. C. C. 552; 1 Jur., N. S. 1114; 25 L. J., M. C. 30; 7 Cox, C. C. 53.

Having counterfeit silver in possession, with intent to utter it as Will. 4, c. 34, s. 8. Rex v. Heath, R. & R. C. C. 184; S. P., Rex v. Stewart, R. & R. C. C. 288.

Procuring base coin, with intent to utter it as good, is a misdemeanor. Rex v. Fuller, R. & R. C. C. 308.

Having in possession a large quantity of base coin is evidence of having procured it with intent to utter it, nnless there are other circumstances to induce a belief that the defendant was the maker. *Ib*.

Having the possession of counterfeit money, with intention to pay it away as for good money, was an indictable offence at common law. Rev v. Parker, 1 Leach, C. C. 41.

Possession of bad money five days after, may be given in evidence to shew guilty knowledge. *Harrison's case*, 2 Lewin, C. C. 118—Taunton.

When pieces of counterfeit coin are found on one of two persons, acting in guilty concert, and both knowing of the possession, both are guilty. *Reg.* v. *Rogers*, 2 M. C. C. 85; 2 Lewin, C. C. 119, 297.

#### 15. Uttering.

Statute. - By 24 & 25 Vict. c. 99, s. 9, "whosoever shall tender, " utter or put off any false or coun-"terfeit coin, resembling or appar-"ently intended to resemble or pass "for any of the Queen's current "gold or silver coin, knowing the "same to be false or counterfeit, " shall, in England and Ireland, be "guilty of a misdemeanor, and "being convicted thereof, shall be "liable, at the discretion of the "court, to be imprisoned for any "term not exceeding one year, with " or without hard labour, and with " or without solitary confinement." (Similar to former provision, 2 & 3 Will. 4, c. 34, s. 7.)

By s. 10, "whosoever shall ten-"der, utter or put off any false or "counterfeit coin, resembling or ap-"parently intended to resemble or "pass for any of the Queen's cur-

"rent gold or silver coin, knowing "the same to be false or counter-"feit, and shall, at the time of such "tendering, uttering, or putting off, "have in his custody or possession, "besides the false or counterfeit "coin so tendered, uttered or put "off, any other piece of false or "counterfeit coin, resembling or ap-"parently intended to resemble or pass for any of the Queen's cur-"rent gold or silver coin, or shall, "either on the day of such tender-"ing, uttering or putting off, or "within the space of ten days then "next ensuing, tender, utter, or put " off any false or counterfeit coin, " resembling or apparently intended "to resemble or pass for any of the "Queen's current gold or silver "coin, knowing the same to be "false or counterfeit, shall, in Eng-"land and Ireland, be guilty of a "misdemeanor, and, being convict-"ed thereof, shall be liable, at the "discretion of the court, to be im-" prisoned for any term not exceed-"ing two years, with or without "hard labour, and with or without " solitary confinement." (Former provision, 2 & 3 Will. 4, c 34, s. 7.)

By s. 11, "whosoever shall have "in his custody or possession three " or more pieces of false or counter-" feit coin, resembling or apparent-"ly intended to resemble or pass "for any of the Queen's current "gold or silver coin, knowing the "same to be false or counterfeit, "and with intent to utter or put off "the same or any of them, shall, in "England and Ireland, be guilty of "a misdemeanor, and being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for the "term of five years (27 & 28 Vict. "c. 47), or to be imprisoned for any "term not exceeding two years, " with or without hard labour, and " with or without solitary confine-"ment."

By s. 12, "whosoever, having been convicted, either before or

"after the passing of this act, of | "any such misdemeanor or crime "and offence as in any of the last "three preceding sections mention-"ed, or of any felony or high crime "and offence against this or any "former act relating to the coin, "shall afterwards commit any of "the misdemeanors or crimes and "offences in any of the said sections "mentioned, shall, in England and "Ireland, be guilty of felony, and "being convicted thereof, shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude, for life, or for any term not "less than five years (27 & 28 Viet. "c. 47), or to be imprisoned for "any term not exceeding two years, "with or without hard labour, and "with or without solitary confine-" ment."

What amounts to. —A prisoner went into a shop, asked for some coffee and sugar, and in payment put down on the counter a counterfeit shilling; the prosecutor said that the shilling was a bad one; whereupon the prisoner quitted the shop, leaving the shilling and also the coffee and sugar:—Held, that this was an uttering and putting off within the statute. Reg. v. Welch, T. & M. 409; 2 Den. C. C. 78; 15 Jur. 136; 20 L. J., M. C. 101.

The prisoner and J. were indicted for a misdemeanor in uttering counterfeit coin. The uttering was effected by J. in the absence of the prisoner, but the jury found that they were both engaged on the evening on which the uttering took place, in the common purpose of uttering counterfeit shillings, and that in pursuance of that common purpose J. uttered the coin in question: -Held, that the prisoner was rightly convicted as a principal, there being no accessories in a misdemeanor. Reg. v. Greenwood, 2 Den. C. C. 453; 5 Cox, C. C. 521; 16 Jur. 390; 21 L. J., M. C. 127.

Upon an indictment which charg- | half-crown. Shortly afterwards they

ed an uttering and a putting off counterfeit coin, the evidence was that the prisoner went into a shop and asked to purchase some articles, putting down a counterfeit shilling in payment, the shopkeeper said it was a bad one, and the prisoner then left the shop without the shilling or goods:—Held, that he was guilty of uttering. Reg. v. Welch, 4 Cox, C. C. 430—Jervis.

The giving of a piece of counterfeit money in charity is not an uttering, although the person may know it to be a counterfeit; as in cases of this kind there must be some intention to defraud. Reg. v. Page, 8 C. & P. 122—Abinger.

But where a person gave a counterfeit coin to a woman with whom he had shortly before had intercourse:—Held, an uttering. Reg. v.\_\_\_\_, 1 Cox, C. C. 250—Denman and Coltman.

Joint Uttering.]—If two utterers of counterfeit coin, with a general community of purpose, go different ways, and utter coin apart from each other, and not near enough to assist each other, their respective utterings are not joint utterings by both. Rex v. Manners, 7 C. & P. 801—Bolland.

If two jointly prepare counterfeit coin, and utter it in different shops, apart from each other, but in concert, and intending to share the proceeds, the utterings of each are the joint utterings of both, and they may be convicted jointly. Reg. v. Hurse, 2 M. & Rob. 360—Maule.

On an indictment for a joint uttering of counterfeit coin, where both are not present at the time of the uttering, the true question seems to be, whether the one was so near the other as to help the other to get rid of the counterfeit coin. Reg. v.Jones, 9 C. & P. 761; Reg. v. Rogers, 2 M. C. C. 85; 2 Lewin, C. C. 119, 297.

Prisoners together uttered a bad

separated, and one of them went to a shop and uttered another bad half-crown, and then the other went to the same shop and uttered a third bad half-crown; but at these second and third utterings neither was proved to have been near the other:—Held, that the proof of previous concert would not sustain a count for a joint uttering in either of the second or third utterings. Reg. v. West, 2 Cox, C. C. 237-Creswell.

By Husband and Wife.]—Husband and wife were jointly indicted for uttering counterfeit coin:-Held, that the wife was entitled to an acquittal, as it appeared that she uttered the money in the presence of her husband. Rex v. Price, 8 C. & P. 19—Park, Bosanquet and Coltman.

A wife went from house to house Her husband uttering base coin. accompanied her, but remained outside:—Held, that the wife acted under her husband's compulsion. Conolly's case, 2 Lewin, C. C. 229— Bayley.

*Indictment.* ] — An indictment, charging that the prisoner, one piece of counterfeit coin, &c., "did utter and put off to A., knowing the same to be false and counterfeit," is good, whether the objection of uncertainty as to the time, &c., and in knowing, is taken before or Reg. v. Page, 2 M. after verdict. C. C. 219; 9 C. & P. 756.

A count charging the prisoner with having counterfeit money in his possession at the time he uttered other counterfeit money, must contain a distinct averment of the fact of uttering. Rex v. Kelly, 3 Esp. 28 —Buller.

An indictment on 15 Geo. 2, c. 28, for uttering bad money by the common trick called "ringing the changes," was good, although it did not state that it was uttered in

ful money; for the words of the statute were in the disjunctive utter or tender in payment. Rex v. Franks, 2 Leach, C. C. 644.

An indictment for knowingly uttering counterfeit coin, charged that the prisoner "did utter and put off to one S. A., the wife of W. G., knowing the same to be false and counterfeit ":-Held, that the allegation of the scienter was sufficient, and that the word "knowing" must be taken to apply to the prisoner, and not to "S. A., the wife of W. G.," who was the last antecedent; and that the scienter must be taken to apply to the time of the uttering, although it was not stated to be "then and there." Reg.v. Jones, 9 C. &P. 761—Coleridge.

Evidence of Guilty Knowledge. —On an indictment for uttering counterfeit coin, to prove a guilty knowledge, evidence may be given of a subsequent uttering by the prisoner of counterfeit coin of a different denomination to that mentioned in the indictment. The difference in the denomination of the coin goes to the weight of evidence, but not to its admissibility. Req. v. Forster, Dears. C. C. 456; 1 Jur., N. S., 407; 3 C. L. R. 681; 24 L. J., M. C. 134; 6 Cox, C. C. 521.

Twice within Ten Days. ]—An indictment for knowingly uttering counterfeit coin twice on the same day, charged an uttering of a counterfeit half-crown, and that the defendant on the same day, uttered "one other piece of false and counterfeit (omitting the word 'coin'), resembling, and apparently intended to resemble, and pass for a piece of the Queen's current silver coin, called a half crown, unlawfully, &c., did utter and put off to one S. A., the wife of W. G., knowing the same to be false and counterfeit":—Held, that the omission of the word "coin" did not render payment as and for good and law-|the indictment bad, as the words

"false and counterfeit" might be rejected as surplusage, and the indictment would then be, "one other piece resembling, and apparently intended to resemble, and pass for a piece of the Queen's current silver coin, called a half-crown." Reg. v. Jones, 9 C. & P. 761—Coleridge.

On a conviction of two separate offences of uttering counterfeit coin, in two counts, one judgment for two years' imprisonment, under 2 & 3 Will. 4, c. 34, s. 7, was bad. Rex v. Robinson, 1 M. C. C. 413.

In an indictment on 15 Geo. 2, c. 28, s. 3, it was not necessary to aver that the defendant was a common utterer of false money. Smith, 2 B. & P. 127. Rex v.

While having other Counterfeit Money. - If two prisoners are indicted for uttering a counterfeit shilling, having another counterfeit shilling in their possession, it is not necessary to prove with certainty which of the pieces was the one uttered, and which was found on them unnttered, if both the pieces of the money are proved to be counterfeit. And if it appears that two prisoners went to a shop, and that one of them went in and uttered the bad money, having no more in her possession, and the other stayed outside the shop, having other bad pieces of money, both may be convicted; the uttering and the possession being both joint. Rex v. Skerritt, 2 C. & P. 427—Garrow.

Where one of two persons in company utters counterfeit coin, and other counterfeit coin is found on the other person, they are jointly guilty of the aggravated offence under 2 & 3 Will. 4, c. 34, s. 7, if acting in concert, and both knowing of the possession. Reg. v. Gerrish, 2 M. & Rob. 219—Maule,

Where a man and woman were indicted for uttering a bad shilling to B., and having in their possession another bad shilling at the time, and the uttering was by the woman | Reg. v Harvey, 11 Cox, C. C. 662.

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alone in the absence of the man: — Held, that the man was not liable to be convicted with the actual utterer, although proved to be the associate of the woman on the day of uttering, and to have had other bad money about him for the purpose of uttering; and, secondly, that the woman could not be convicted of the second offence of having other bad money in her possession, on the evidence of her associating with a man not present at the uttering, but having large quantities of bad money about him for the purpose of uttering. Rew v. Else, R. & R. C. C. 142. But see Reg. v. Greenwood, 5 Cox, C. C. 521; 2 Den. C. C. 453.

### 16. When Offence complete.

By 24 & 25 Vict. c. 99, s. 30, "every offence of falsely making or " counterfeiting any coin, or of buy-"ing, selling, receiving, paying, ten-"dering, uttering or putting off, or of "offering to buy, sell, receive, pay, utter or put off, any false or coun-"terfeit coin, against the provisions " of this act, shall be deemed to be "complete, although the coin so " made or counterfeited, or bought, " sold, received, paid, tendered, ut-"tered or put off, or offered to be "bought, sold, received, paid, utter-"ed or put off, shall not be in a fit "state to be uttered, or the coun-"terfeiting thereof shall not be fin-"ished or perfected,"

Forging the impression of money on an irregular piece of metal, without finishing it, so as to make it current, was an incomplete crime, and not high treason. Rex v. Varley, 2 W. Bl. 682; 1 Leach, C. C. 76, 253; 1 East, P. C. 164.

That it is not necessary to complete the offence that the possession should be with a felonious intent other than knowledge of possession without lawful authority or excuse. 17. Evidence.

By 24 & 25 Vict. c. 99, s. 29, "where upon the trial of any person "charged with any offence against "this act, it shall be necessary to "prove that any coin produced "in evidence against such person is "false or counterfeit, it shall not be "necessary to prove the same to be "false and counterfeit by the evi-"dence of any moneyer, or other "officer of her Majesty's mint, but "it shall be sufficient to prove the "same to be counterfeit by the evi-"dence of any other credible wit-"ness." (Former provision, 2 & 3 Will. 4, c. 34, s. 17.)

The usual practice is to call, as a witness, a silversmith of the town where the trial takes place, who examines the coin in court in the presence of the jury. Davis's C. L. 235.

#### 18. Previous Conviction.

Indictment.]—By 24 & 25 Vict. c. 99, s. 37, "where any person "shall have been convicted of any "offence against this act, or any "former act relating to the coin, "and shall afterwards be indicted "for any offence against this act "committed subsequent to such "conviction, it shall be sufficient in "any such indictment, after charg-"ing such subsequent offence, to "state the substance and effect only "(omitting the formal part) of the "indictment and conviction for the "previous offence."

Before this enactment, an indictment for uttering counterfeit coin, knowing it to be counterfeit (after a previous conviction), charged that the prisoner did utter a counterfeit half-crown to E. H., knowing the same to be false and counterfeit:—Held, that the allegation of the scienter was sufficient, and that the word "knowing" must be taken to apply to the prisoner, and not to E. H., who was the last antecedent, and that the scienter must be taken to apply to the time of the uttering, although it was not stated to be

"then and there." Reg. v. Page, 9 C. & P. 756; 2 M. C. C. 219.

Certificate and Proof of Conviction. — "And a certificate contain-"ing the substance and effect only " (omitting the formal part) of the "indictment and conviction for the " previous offence, purporting to be " signed by the clerk of the court, or "other officer having or purporting "to have the custody of the records "of the court where the offender was "first convicted, or by the deputy " of such clerk or officer, shall, upon "proof of the identity of the person "of the offender, be sufficient evi-"dence of the previous conviction, without proof of the signature or "official character or authority of "the person appearing to have sign-"ed the same, or of his custody or "right to the custody of the rec-"ords of the court; and for every "such certificate a fee of 6s. 8d., "and no more shall be demanded " or taken."

Arraignment and Trial.]—"And "the proceedings upon any indict-"ment for committing any offence "after a previous conviction or con-"victions, shall be as follows; that " is to say, the offender shall in the "first instance be arraigned upon "so much only of the indictment as "charges the subsequent offence; "and if he plead not guilty, or if "the court order a plea of not "guilty to be entered on his behalf, "the jury shall be charged in the "first instance to inquire concern-"ing such subsequent offence only; " and if they find him guilty, or if "on arraignment he plead guilty, "he shall then, and not before, be "asked whether he had been previ-"ously convicted, as alleged in the "indictment; and if he answer that "he had been so previously convict-"ed, the court may proceed to sen-"tence him accordingly; but if he "deny that he had been so previously "convicted, or stand mute of mal"ice, or will not answer directly to "such question, the jury shall then "be charged to inquire concerning "such previous conviction or convictions; and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry."

Evidence of Good Character. ]-"Provided that if, upon the trial of "any person for any such subse-"quent offence, such person shall "give evidence of his good charac-"ter, it shall be lawful for the "prosecutor, in answer thereto, to give evidence of the conviction of "such person for the previous of-"fence or offences before such ver-"dict of guilty shall be returned, " and the jury shall inquire concern-"ing such previous conviction or " convictions at the same time that "they inquire concerning such sub-" sequent offence."

On an indictment for uttering a counterfeit coin after a previous conviction, such previous conviction for uttering false coin cannot be put in evidence for the purpose of proving guilty knowledge. \*Reg. v. Goodwin, 10 Cox, C. C. 584—Mellor. But this decision is overruled by the next case.

On the trial of an indictment for felonious possession of counterfeit coin, with intent to utter the same, after previous conviction, the course of proceeding at the trial is prescribed by 24 & 25 Vict. c. 99, s. 37, viz., first to try that part of the offence which relates to the possession, and then if the prisoner is found guilty, to try the prisoner for the previous conviction. Reg. v. Martin, 21 L. T., N. S. 469; 18 W. R. 72; 1 L. R., C. C. 214—C. C. R.

19. Validity of Convictions and Commitments.

By 24 & 25 Vict. c. 99, s. 32, "whatsoever to apprehend any per-"no conviction for any offence pun- "son who shall be found commet-

"ishable on summary conviction under this act shall be quashed for want of form, or be removed by certiorari into any of her Majesty's superior courts of recurd; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a valid conviction to sustain the same."

20. Conveying Coining Tools or Coin from the Mint without Authority.

By 24 & 25 Vict. c. 99, s. 25, "who-"soever, without lawful authority "or excuse (the proof whereof shall "lie on the party accused), shall "knowingly convey out of any of " her Majesty's mints any puncheon, " counter puncheon, matrix, stamp, " die, pattern, mould, edger, edging " or other tool, collar, instrument, " press or engine used or employed "in or about the coining of coin, or " any useful part of any of the sever-"al matters aforesaid, or any coin, "bullion, metal or mixture of met-"als, shall, in England and Ireland, "be guilty of felony, and being "convicted thereof, shall be liable, "at the discretion of the court, to " be kept in penal servitude for life, "or for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-" out hard labour, and with or with-"out solitary confinement."

21. Power to seize Counterfeit Coin and Coining Tools.

(24 & 25 Vict. c. 99, s. 27.)

(Former provisions, 2 & 3 Will. 4, c. 34, s. 14, and 37 Geo. 3, c. 126, s. 7, and 43 Geo. 3, c. 139, s. 7.)

22. Apprehension of Offenders.
By 24 & 25 Vict. c. 99, s. 31; "it; shall be lawful for any person whatsoever to apprehend any person son who shall be found commit-

"ting any indictable offence, or any "high crime and offence, or crime "and offence, against this act, and "to convey or deliver him to some "peace officer, constable or officer of police, in order to his being conveyed as soon as reasonably may be before a justice of the peace or some other proper officer, "to be dealt with according to "law."

# 23. Prosecution and Trial of Offenders.

Venue. ]-By 24 & 25 Vict. c. 99, s. 28, "where any person shall tend-"er, utter, or put off any false or "counterfeit coin in one county or "jurisdiction, and shall also tender, "utter, or put off any other false or "counterfeit coin in any other "county or jurisdiction, either on "the day of such first-mentioned "tendering, uttering, or putting off, "or within the space of ten days "next ensuing, or where two or "more persons, acting in concert in "different counties or jurisdictions "shall commit any offence against "this act, every such offender may " be dealt with, indicted, tried, and "punished, and the offence laid "and charged to have been com-"mitted, in any one of the said "counties or jurisdictions, in the "same manner in all respects as if "the offence had been actually and "wholly committed within such "one county or jurisdiction."

On the High Seas.]—By s. 36, "all indictable offences mentioned "in this act, which shall be committed within the jurisdiction of the Admiralty of England or Ire-"land, shall be deemed to be of-"fences of the same nature, and "liable to the same punishments, "as if they had been committed upon the land in England or Ire-"land, and may be dealt with, in-"quired of, tried, and determined in any county or place in England "or Ireland in which the offender

"shall be apprehended or be in cus-"tody, in the same manner in all "respects as if the same had been " actually committed in that county " or place, and in any indictment "for any such offence, or for being "accessory to any such offence, the "venue in the margin shall be the "same as if such offence had been "committed in such county or "place, and the offence itself shall "be averred to have been commit-"ted 'on the high seas': provided "that nothing herein contained "shall alter or affect any of the "laws relating to the government "of her Majesty's land or naval "forces."

On Summary Convictions. —By s. 41, "every offence hereby made "punishable on summary convic-"tion may be prosecuted in En-"gland in the manner directed by "11 & 12 Vict. c. 43, and may be "prosecuted in Ireland before two "or more justices of the peace, or "one metropolitan or stipendiary "magistrate, in the manner direct-"ed by 14 & 15 Vict. c. 93, or in "such other manner as may be di-"rected by any act that may be "passed for like purposes; and all provisions contained in the said "acts shall be applicable to such "prosecutions in the same manner "as if they were incorporated in "this act: provided that nothing "in this act contained shall in any "manner alter or affect any enact-"ment relating to procedure in the "case of any offence punishable on "summary conviction within the "city of London, or the metropoli-"tan police district, or the recovery "or application of any penalty or "forfeiture for any such offence."

24. Punishment.

(24 & 25 Vict. c. 99, s. 35.)

25. Costs of Prosecution. By s. 42, "in all prosecutions for "any offence against this act in "England, which shall be conduct-"ed under the direction of the so-"licitors of her Majesty's Treasury, "the court before which such of-"fence shall be prosecuted or tried "shall allow the expenses of the "prosecution in all respects as in "cases of felony; and in all prose-"cutions for any such offence in "England which shall not be so "conducted, it shall be lawful for "such court, in case a conviction "shall take place, but not other-"wise, to allow the expenses of the "prosecution in like manner; and "every order for the payment of " such costs shall be made out, and "the sum of money mentioned there-"in paid and repaid, upon the same "terms and in the same manner in "all respects as in cases of felony."

Actions against Persons acting in pursuance of the Statute.

By 24 & 25 Vict. c. 99, s. 33, "all actions and prosecutions to be "commenced against any person "for anything done in pursuance of "this act shall, in England or Ire-"land, be laid and tried in the "county where the fact was com-"mitted, and shall, in England, "Ireland, or Scotland, be com-"menced within six months after "the fact committed, and not oth-"erwise; and notice in writing of "such action, and of the cause thereof, shall be given to the de-"fendant one month at least before "the commencement of the action; " And in any such action brought

"in England or Ireland the defend-"ant may plead the general issue, "and give this act and the special "matter in evidence, at any trial

"to be had thereupon;

"And no plaintiff shall recover "in any such action if tender of "sufficient amends shall have been " made before such action brought, "or if a sufficient sum of money "shall have been paid into court "after such action brought, by or

"on behalf of the defendant, and "if in England or Ireland a verdict "shall pass for the defendant, or "the plaintiff shall become nonsuit, "or discontinue any such action "after issue joined, or if, upon de-"murrer or otherwise, judgment "shall be given against the plaint-"iff, in every such case the defend-"ant shall recover his full costs as "between attorney and client, and " have the like remedy for the same "as any defendant has by law in "other cases; and though a verdict "shall be given for the plaintiff in "any such action, such plaintiff "shall not have costs against the "defendant unless the judge before "whom the trial shall be shall cer-"tify his approbation of the ac-" tion."

In order to entitle a party to a notice of action for a thing done in pursuance of this statute, it is enough that he honestly and boná fide believes he is acting in pursuance of the act, whether there is reasonable ground for such belief or not. Hermann v. Seneschal, 13 C. B., N. S. 392; 32 L. J., C. P. 43; 11 W. R. 184; 6 L. T., N. S. 646.

X. Concealment of the Birth OF CHILDREN.

1. The Offence, 101.

2. Indictment, 104. Evidence, 105.

### 1. The Offence.

Statute.]—By 24 & 25 Vict. c. 100, s. 60, "if any woman shall be "delivered of a child, every person "who shall, by any secret disposi-"tion of the dead body of the said "child, whether such child died "before, at, or after its birth, en-" deavour to conceal the birth there-"of, shall be guilty of a misde-"meanor, and, being convicted "thereof, shall be liable, at the "discretion of the court, to be im-

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" prisoned for any term not exceed-"ing two years, with or without "hard labour: provided that if "any person tried for the murder "of any child shall be acquitted "thereof, it shall be lawful for the "jury by whose verdict such per-"son shall be acquitted to find, in "case it shall so appear in evi-"dence, that the child had recently "been born, and that such person "did, by some secret disposition of "the dead body of such child, en-" deavour to conceal the birth there-"of, and thereupon the court may " pass such sentence as if such per-"son had been convicted upon an "indictment for the concealment of "the birth." (Former provision, 9 Geo. 4, c. 31, ss. 14, 31. The 9 Geo. 4, c. 31, repealed 43 Geo. 3, c. 58.)

Since this Enactment.]—On an indictment against the mother for concealment of the birth of her illegitimate child, it appeared that the body of the child was found, three days after it was born, behind the door of the privy belonging to the house where she lived as a domestic servant, in a tub covered over with a small cloth:—Held, that there was no conclusive evidence to warrant the jury in finding a verdict for concealment of the birth. Reg. v. Opie, 8 Cox, C. C. 332—Martin.

To endeavor to conceal the birth of a child by a secret disposition of the dead body within 24 & 25 Vict. c. 100, s. 60, it must be by putting it into some place where it is not likely to be found. Placing it in an open box in the prisoner's bedroom, and afterwards, on inquiry by the medical man, informing him that the child was in the box, where it was found, is not a secret disposition. Reg. v. Sleep, 9 Cox, C. C. 559—Byles.

A fœtus not bigger than a man's finger, but having the shape of a Reg. v. Colmer, 9 Cox, C. C. 506— Martin.

Before this Statute. —The mother of a child, of which she has been recently delivered, with the intention of concealing the dead body of the child from a surgeon, placed it under a bolster on which she laid It was assumed that her head. she meant to remove the body elsewhere when an opportunity occurred:—Held, that she was properly convicted of endeavoring to conceal the birth of the child by secretly disposing of the dead body, as it was not necessary in order to constitute that offence, under 9 Geo. 4, c. 31, s. 14, that the body should be put in a place which was intended to be the place of its final deposit. Reg. v. Perry, Dears. C. C. 471; 1 Jur., N.S. 408; 24 L. J., M. C. 137; 3 C. L. R. 691; 6 Cox, C. C. 531; S. P., Reg. v. Gold-thorpe, Car. & M. 335; 2 M. C. C. 244; Reg. v. Farnhan, 1 Cox, C. C. 349.

The concealment sought to be checked by 9 Geo. 4, c. 31, s. 14, was that which would keep the world at large in ignorance of the birth of a child. Reg. v. Morris, 2 Cox, C. C. 489—Coltman.

While, therefore, the offence may on the one hand be committed, even though the pregnancy and delivery be made known to a confidant, so on the other it is not an offence within the act if the endeavour to conceal proceed from a desire to escape individual observation or Where, therefore, it apanger. peared that the body of a bastard child would have been buried by the prisoner in the churchyard, but for her fear to provoke her father, under the operation of which she conveyed it secretly to a pond:— Held, that the case did not fall within the act. Ib.

On an indictment against the mother for the murder of her illechild, is a child within the statute. gitimate child, it appeared that the body of the child was found, a few hours after its birth, on the floor of an attic in a house where she lived as domestic servant, the head severed from the body, and both lying in sheets which had been removed from the bedroom below, which was occupied by the prisoner and her mistress, and where there was evidence to shew that the birth had taken place, but it was doubtful whether the severance of the head from the body was effected there or in the attic:—Held, that there was no evidence to warrant the jury in finding a verdict for the statutable misdemeanor of endeavouring to conceal the birth. Reg. v. Goode, 6 Cox, C. C. 318—Talfourd.

On a charge of concealment of birth, it must appear that the child had gone such a time in its mother's womb that it would, in the ordinary course of things, when born, have had a fair chance of life. Under seven months it may be fairly presumed that it would not be born alive. Reg. v. Berriman, 6 Cox, C. C. 388—Erle.

A woman was delivered of a child, whose dead body was found at her father's house in a bed among the feathers. There was no evidence to shew who placed it there, but it being proved that the woman had sent for a surgeon at the time of her confinement, and had prepared child's clothes, the judge directed an acquittal on the charge of endeavoring to conceal the birth. Rew v. Higley, 4 C. & P. 366—Park.

In a case of concealment of birth under 9 Geo. 4, c. 31, s. 14, it was essential to the commission of the offence that the prisoner should have done some act of disposal of the body after the child was dead; therefore, if the prisoner had gone to a privy for another purpose, and the child came from her unawares, and fell into the soil and was suffocated, she must be acquitted of this charge, notwithstanding her denial

of the birth of the child. Reg. v. Turner, 8 C. & P. 755—Patteson. S. P., Reg. v. Coxhead, 1 C. & K. 623—Platt.

A prisoner found with the body still in her possession, though about to dispose of it, could not be convicted. *Rex* v. *Snell*, 2 M. & Rob. 44—Gurney.

The act of throwing a bastard child down the privy, by its mother, was evidence of an endeavour to conceal the birth, within 43 Geo. 3, c. 58, s. 3. Rex v. Corrivall, R. & R. C. C. 337.

On an indictment for child murder, no one but the mother can be convicted of a concealment of the birth of the child. Reg. v. Wright, 9 C. & P. 754—Gurney.

Aiding and Assisting.]—A woman was delivered of a child, which died soon after its birth; concurred with her paramour in endeavouring to conceal the birth, and he, in consequence of her persuasion, she remaining in bed, took the body, and buried it in a field, intending thereby to conceal the birth: — Held, that she could be convicted of endeavouring to conceal the birth, under 9 Geo. 4, c. 31, s. 14, and he of counselling, aiding and abetting her in the offence. Reg. v. Bird, 2 C. & K. 817—Platt.

If a woman is delivered of a child which is dead, and a man takes the body and secretly buries it, she is indictable for the concealment by secret burying, under 9 Geo. 4, c. 31, s. 14, and he for aiding and abetting under sect. 31, if there was a common purpose in both in thus endeavouring to conceal the birth of the child; but the jury must be satisfied not only that she wished to conceal the birth, but was a party to the carrying that wish into effect by the secret burial by the hand of the man, in pursuance of a common design between them. Reg. v. Skelton, 3 C. & K. 119—Williams.

If the body of a dead child was secretly buried, or otherwise disposed of, by an accomplice of its mother, the accomplice acting as her agent in the matter, the mother of the child was punishable under 9 Geo. 4. c. 31, s. 14. Rex v. Douglas, 7 C. & P. 644—Gaselee.

A woman delivered of a child born alive, endeavored to conceal the birth by depositing the child, while alive, in the corner of a field, leaving the infant to die from exposure, which it did, and the dead body was afterwards found in the corner:—Held, that she could not be convicted of concealing the birth of the child under 24 & 25 Vict. c. 100, s. 60, which relates to the secret disposition of the dead body of a child. Reg. v. May, 10 Cox, C. C. 448; 15 W. R. 751; 16 L. T., N. S. 362.

On an indictment for secretly disposing of the dead body of a bastard child, with intent to conceal its birth, it is a question of law for the judge, whether there has been a secret disposing of the body, i. e. a disposing of it in such a place as that the offence may have been committed (and a dust-bin is such a place); but it is for the jury to say whether there has been such a disposing of the body by the prisoner with such an intent, and the jury must be satisfied that the prisoner so disposed of it, or was a party to such a disposition of it, with in-Reg. v. Clarke, 4 F. & F. 1040—Martin.

On an indictment for concealing the birth of her child, it appeared that the prisoner had been confined of a child which had not attained to seven months from conception, it had never lived, and was slightly malformed, it was left to the jury to say whether the offspring had so far matured as to become a child, or was only a feetus, or the unformed subject of a premature marriage. Reg. v. Hewitt, 4 F. & F. 1101—Smith.

Leaving the dead body of a child | was laid upon the heap, but behind

in two boxes, closed, but not locked or fastened, one being placed inside the other in a bedroom, but in such a position as to attract the attention of those who daily resorted to the room, is not a secret disposition of the body within 24 & 25 Vict. c. 100, s. 60. Reg. v. George, 11 Cox, C. C. 41—Boyill.

In order to convict a woman of attempting to conceal the birth of a child, a dead body must be found, and identified as that of the child of which she is alleged to have been delivered. Reg. v. Williams, 11 Cox, C. C. 684.

#### 2. Indictment.

An indictment for concealing the birth of a child must expressly allege that the child is dead. Rex v. Davis, 1 Russ. C. & M. 779.

An indictment for concealing the birth of a child "by secretly disposing of the dead body," under 9 Geo. 4, c. 31, s. 14, without shewing the mode of disposing of the dead body, was bad. Reg. v. Hounsell, 2 M. & Rob. 292—Maule.

An indictment on 9 Geo. 4, c. 31, s. 14, for endeavouring to conceal the birth of a dead child, need not have stated whether the child died before, at, or after its birth. Reg. v. Coxhead, 1 C. & K. 623—Platt.

An indictment for that offence, which charged that the defendant did cast and throw the dead body of the child into soil in a privy, "and did thereby then and there unlawfully dispose of the dead body of the child, and endeavour to conceal the birth thereof," sufficiently charged the endeavour to conceal the birth, as the word "thereby" applied to the endeavour, as well as to the disposing of the dead body. *Ib*.

Where an indictment for concealing the birth of a child alleged the concealment to have been in and among a certain heap of carrots, and the evidence was that the body was laid upon the heap, but behind

it, so that it was hidden from the passers by by the upper part of the heap. Semble, that the evidence did not support the indictment. Reg. v. —, 6 Cox, C. C. 391—Crompton.

Held, that the provision of 14 & 15 Vict. c, 100, s. 1, empowering the judge to amend certain variances between the indictment and the evidence, did not extend to such an

amendment as this. Ib.

Where proof that a woman was delivered of a child and allowed others to take away the body, was held insufficient to sustain an indictment against her for concealment of birth. Reg. v. Bate, 11 Cox, C. C. 686.

#### 3. Evidence.

Where there is no clear evidence of an offence having been committed, a police officer is not justified, in consequence of mere rumors in a neighbourhood, in putting searching questions to a person for the purpose of eliciting the proof of a crime, as well as of that person's connection with it. After the investigation before a magistrate on a charge of concealment of birth, and after the accused had been cautioned in the usual manner, and had stated that she had nothing to say, but before her actual committal, the presiding magistrate asked her what she had done with the body of the child:—Held, that her statement in answer was not admissible; nor would the judge allow a witness to be asked whether, in consequence of such statement, he did Reg. v. Berria particular thing. man, 6 Cox, C. C. 388—Erle.

The prisoners were sent for trial receiving the usual caution from the magistrate as to anything they might say:—A. made a statement, which was taken down in writing, and attached to the depositions:—Held, that the latter statement of A. might be read at the trial as ev-

idence against herself. 1b.

The defendant was indicted for the concealment of the dead body of her child. The evidence as to identification was not sufficient to warrant a conviction:—Held, that evidence must be clear and direct to identify the body found as the child of which the party was said to have been delivered, or conviction will not follow. Reg. v. Williams, 11 Cox, C. C. 684.

A., being questioned by a police officer about the concealment of a birth, gave answer which caused the officer to say that it were better for her to tell the truth and not a lie:—Held, that a further statement to the officer was inadmissible in evidence against her, as not being free and voluntary. Reg. v Bate,

11 Cox, C. C. 686.

A. was taken into custody and placed with B. and C., charged as accomplices with concealment of birth. All three made statements:—Held, that their statements were not affected by the previous inducement to A., and were admissible against B. and C. respectively, but that made by A. was not so. *Ib*.

#### XI. Conspiracy.

The Offence, 105.

Trade Combinations, 107.
 Parties Indictable, 109.

4. Indictment, 109.

5. Particulars of Overt Acts, 113.6. Evidence, 113.

Trial and Verdict, 117.
 New Trial, 118.

# 1. The Offence.

An indictment for conspiracy, at common law, will lie for enticing a young woman under age to leave her father's house, and live in fornication with one of the defendants; and concerting measures, with her own approbation, to carry her off and conceal her for that purpose. Rew v. Gray, (Lord), 1 East, P. C. 460.

Prisoners were found guilty upon an indictment charging them with conspiring to solicit, persuade, and procure an unmarried girl, of the age of seventeen, to become a common prostitute, and with having, in pursuance of that conspiracy, solicited, incited and endevoured to procure her to become a common prostitute:—Held, that although common prostitution was not an indictable offence, it was unlawful, and the indictment therefore good, without averring that the prosecutrix was a chaste woman at the time of the conspiracy. Reg. v. Howell, 4 F. & F. 160—Bramwell and Recorder Gurney.

Two women induced a girl of fifteen, who had left her place as a servant, to go to their house, one of them pretending that she had known her deceased parents, and saying that she would keep her until she got a place, and that they both would assist her in getting one. They were both women of bad character, and the place where they resided was a house of ill-fame. was false that they or either of them had known the parents of the prosecutrix, and they took no step whatever to get her a place, but urged her to have recourse to prostitution. They introduced a man to her, and attempted, by persuasion, and holding out prospects of money, to induce her to consent to illicit connexion with him. She refused to consent, and declared her intention quitting the house; the prisoners refused to give her up her clothes, and she left without them: —Held, that they were rightly convicted of a conspiracy, and that they might have have been indicted for the offence at common law. Reg. v. Mears, 2 Den. C. C. 79; T. & M. 414; 15 Jur. 66; 20 L. J., M. C. 59; 4 Cox, C. C. 423.

A conspiracy to procure a marriage between poor persons of different parishes, for the purpose of exonerating the parish of the woman

and charging the other parish, is not an indictable offence, unless the parties are unwilling to marry, or some forcible or fraudulent means of bringing about the marriage were resorted to. Rex v. Seward, 3 N. & M. 557; 1 A. & E. 706.

A conspiracy to exonerate from the prospective burthen of maintaining a pauper, not at the time actually chargeable, and to throw the burthen upon another parish, by means not in themselves unlawful, is not indictable. *Ib*.

If a man and woman marry in the name of another, for the purpose of raising a specious title to the estate of the person whose name is assumed, it is a conspiracy. Rex v. Robinson, 1 Leach, C. C. 37; 2

East, P. C. 1010.

It is an indictable offence to conspire on a particular day by false rumors, to raise the price of the public government funds, with intent to injure the subjects who should purchase on that day. Rex v. De Berenger, 3 M. & S. 68.

Getting money out of a man by conspiring to charge him with a false fact is indictable as a conspiracy, whether the fact charged is criminal or not in itself. Rex v. Rispal, 1 W. Bl. 368; 3 Burr. 1320.

If brokers agree together, before a sale by auction, that one only of them should bid for each article sold, and that all articles thus bought by any of them should be sold again among themselves at a fair price, and the difference between the auction price and the fair price divided among them: this is a conspiracy for which they are indictable. Levi v. Levi, 6 C. & P. 239—Gurney.

A conspiracy to extort money is per se an offence at common law, and need not be charged to be attempted by unlawful means. Rex v. Hollingberry, 6 D. & R. 345; 4 B. & C. 329.

ent parishes, for the purpose of exonerating the parish of the woman for a conspiracy by a master, an attorney, and a gentleman, to assign | C. C. 337; 2 C. L. R. 479; 18 Jur. over a female apprentice, by her own consent, for the purpose of prostitution. Rex v. Delaval, 3 Burr. 1434; 1 W. Bl. 410, 439.

So, for a combination to fix the price of salt. Rex v. Norris, 2 Ld. Ken. 300.

An indictment will lie for a conspiracy to obtain money as a reward for an appointment to an office under government. Rex v. Pollman, 2 Camp. 229—Ellenborough.

On an indictment for conspiracy for the sale and transferring of a railway excursion ticket, not transferrable:—Held, that the prisoners must be acquitted, unless there was a previous concert between them to obtain the ticket, for the purpose of its being fraudulently used. v. Absolon, 1 F. & F. 498-Wight-

The directors of a joint-stock bank, knowing it to be in a state of insolvency, issued a balance-sheet shewing a profit, and thereupon declared a dividend of six per cent. They also issued advertisements inviting the public to take shares upon the faith of their representations that the bank was in a flourishing condition. On an ex officio information filed by the Attorney-General, they were found guilty of a conspiracy to defraud. Reg. v. Brown, 7 Cox, C. C. 442; Reg. v. Esdaile, 1 F. & F. 213; Cook Evans' Rep. (1858).

The offence of conspiracy is rendered complete by the bare engagement and association of two or more persons to break the law, without any act being done in pursuance thereof by the conspirators. O' Connell v. Reg. (in error), 11 C. & F. 155; 9 Jur. 25.

An indictment will lie for conspiring by false representations of fact to induce a person to forego a claim, although the result of such conspiracy is not to deprive him of his right to enforce payment thereof

386; 23 L. J., M. C. 108; 6 Cox, C. C. 366.

A. and B. in concert with each other, falsely pretended to C. that a horse which they had for sale had been the property of a lady deceased, and was then the property of her sister, and was not then the property of any horse-dealer, and that the horse was quiet to ride and drive, and by these misrepresentations induced C. to purchase the horse:—Held, that they were indictable for conspiracy, although the money was to be obtained through the medium of a contract. Reg. v. Kenrick, 5 Q. B. 49; D. & M. 208; 7 Jur. 848; 12 L. J., M. C. 135.

Where the evidence in support of a conspiracy shews the object of the conspiracy to be in itself felonious, and that a felony was committed in carrying it out, the defendants are not entitled to an acquittal on the ground that the misdemeanor is merged in the felony; nor is it any ground for arresting the judgment, that on the face of the indictment itself the object of the conspiracy amounts to a felony, the gist of the offence charged being the conspiracy. Reg. v. Button, 11 Q. B. 929; 12 Jur. 1017; 18 L. J., M. C. 19: 3 Cox, C. C. 229.

An indictment for conspiracy to violate the provisions of a statute will lie after the repeal of such statute, for an offence committed before the repeal. Reg. v. Thompson,16 Q. B. 832; Dears. C. C. 3; 15 Jur. 654; 20 L. J., M. C. 183.

A conspiracy cannot exist without the consent of two or more persons, and their agreement is an act in advancement of the intention which each of them has conceived in his mind. Mulcahy v. Reg. (in error), 3 L. R., H. L. Cas. 306: S. C., Ir. Q. B., 1 Ir. R., C. L. 13.

### 2. Trade Combinations.

A combination of workmen, for by action. Reg. v. Carlisle, Dears. the purpose of dictating to masters

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whom they shall employ, is indict-Rex v. Bykerdike, 1 M. & Rob. 179—Patteson.

An indictment for a conspiracy to impoverish a man, by preventing him from working at his trade, need not state the overt acts used to effect the intended mischief. Rex v. *Eccles*, 1 Leach, C. C. 274.

A conspiracy to obstruct a manufacturer in carrying on his business, by inducing and persuading workmen who had been hired by him to leave his service, in order to force him to raise his rate of wages, or to make an alteration in the mode of conducting and carrying on his trade, is an indictable offence; and an agreement to induce and persuade workmen, under contracts of servitude for a time certain, to absent themselves from such service, is an indictable offence, although no threats or intimidation are proved, or any ulterior object averred. Reg. v. Duffield, 5 Cox, C. C. 404 —Erle.

Workmen who agree that none of those who make the agreement will go into employ unless for a certain rate of wages, have no right to agree to molest, or intimidate, or annoy other workmen in the same line of business, who refuse to enter into the agreement, and who choose to work for employers at a lower rate of wages. *Ib.* 

In these cases the essence of the offence is the combination to carry out an unlawful purpose, and the unlawful combination or conspiracy is to be inferred from the conduct

of the parties. Ib.

If persons conspire together to take away the workmen of a manufacturer, that constitutes such an obstruction and molestation of him as to support that part of a count | which alleges a conspiracy by molesting and obstructing him.

If a handbill says that certain things will be done by certain persons, and that handbill is circulated

could see it, and they do the very thing that the handbill indicates they would do, the contents of the handbill are admissible against them.

In order to render the speech of a third person at a meeting admissible on an indictment for conspiring against third parties, not present at that meeting, it must be shewn either that such third person was co-operating at that time with the defendants as a co-conspirator, and engaged with them in one common purpose, or that he was acting as the agent of the defendant. 16.

An indictment charged the defendants with conspiring to force workmen hired and employed by P. in his business of a japanner to depart from their employment, by unlawfully molesting them; by unlawfully using threats to them; by unlawfully intimidating them; by unlawfully molesting P., and by unlawfully obstructing P. so carrying on his business, and the workmen so hired:—Held, that these counts were sufficiently full and certain, and that the means by which the conspiracy was to be carried on were well stated in the words of the 6 Geo. 4, c. 129, s. 3. Reg. v. Rowlands, 17 Q. B. 671; 21 L. J., M. C. 81; 5 Cox, C. C. 436. See Hilton v. Eckersley, 1 Jur., N. S. 874; 24 L. J., Q. B. 353; 6 El. & Bl. 47.

The Philanthropic Society Coopers was formed in order to relieve its members when sick, and to provide for their funerals. of their members was fined by them for working in a yard where steam machinery was used, and upon non-payment of the fine they acted in such a way as to prevent him from obtaining work:—Held, an illegal combination and conspiracy. Reg. v. Hewitt, 5 Cox, C. C. 162 - Campbell.

An indictment against journeymen for a conspiracy against their where it is probable those persons employers, to prevent them from taking any apprentices, is proved by evidence of their having quitted their employment with an intention to compel such employers to dismiss any person as an apprentice. Rex. v. Ferguson, 2 Stark. 489-Wood.

An indictment for conspiring "to prevent the workmen of J. G. from continuing to work, &c.," is supported by evidence of a conspiracy to prevent any from continuing, Rex v. Bykerdike, 1 M. & Rob. 179—Patteson.

### 3. Parties Indictable.

Where two conspire, and one dies, the other may still be indicted for the conspiracy. Rex v. Nicholls,

13 East, 412, n.

Three persons being in a publichouse with the prosecutor, one of them in concert with the other two placed a pen case on the table and left the room. Whilst he was absent, one of the two remaining took the pen out of the case, and put a pin in its place, and the two induced the prosecutor to bet with the other, when he returned into the room, that there was no pen in the case, and the prosecutor staked On the pencil case being turned up, another pen fell into the prosecutor's hand, and the three took the money:-Held, that the evidence supported a conviction upon a count charging the three with conspiring by false pretences and fraudulent devices to cheat the prosecutor of his money, although it appeared that he had the intention of cheating one of the three if Reg. v. Hudson, Bell, he could. C. C. 263; 8 Cox, C. C. 305; 6 Jur., N. S. 566; 29 L. J., M. C. 145; 8 W. R. 421; 2 L. T., N. S. 263.

#### 4. Indictment.

In an indictment for a conspiracy to extort money, one count averred that the defendants, in pursuance of law. Rex v. Richardson, 1 M. & a conspiracy to extort money from | Rob. 402—Denman.

the prosecutor, falsely exhibited certain indictments against him; another count averred that the defendants, in pursuance of the like conspiracy, offered to suppress an indictment pending against the prosecutor, if he would give them money for so doing. The jury found the defendants guilty, but found specially, that the indictments preferred by them against the prosecutor were not false:— Held, that the averment in the former count was immaterial, and that the latter count would support the conviction. Rex v. Hollingberry, 6 D. & R. 345; 4 B. & C. 329.

An indictment to conspire to raise the price of funds with intent to injure the persons who should purchase is well enough, without specifying the particular persons who purchased as the persons intended to be injured. Rex v. De Beren-

ger, 3 M. & S. 68.

An indictment charged that the defendants conspired, by divers false pretences and subtle means and devices, to obtain from A. divers large sums of money, and to cheat and defraud him thereof:—Held, that the gist of the offence being the conspiracy, it was quite sufficient only to state that fact and its object, and not necessary to set out the specific pretences. Rex v. Gill. 2 B. & A. 204.

In an indictment for a conspiracy, in producing a false certificate in evidence, it is not necessary to set forth that the defendants knew at the time of the conspiracy that the contents of the certificate were false; it is sufficient that for such purpose they agreed to certify the fact as true, without knowing that it was so. Rex v. Mawbey, 6 T. R. 619.

An indictment to cheat and defraud a party of the fruits and advantages of a verdict obtained, is too general, and bad in point of

Where the overtacts were charged to have been done with intent to defraud L. G., who was entitled to receive the sum of money in question, and the jury found that L. G., was not so entitled: -Held, that a verdict of guilty could not be support-Reg. v. Dean, 4 Jur. 364.

A count for conspiring to deceive and defraud divers of her majesty's subjects who should bargain with the defendants for the sale of goods, of great quantities of such goods, without making payment, remuneration or satisfaction for the same, with intent to obtain profit and emolument to the defendants (not stating with particularity what the defendants conspired to do), is bad, as not shewing that the conspiracy was for a purpose necessarily criminal. Reg. v. Peck, 9 A. & E. 686; 1 P. & D. 508.

But it is no objection that the count does not name the parties who were to have been defrauded.

A count charging that the defendants, being indebted to divers persons, conspired to defraud them of the payment of such debts, and in pursuance of such conspiracy executed a false and fraudulent deed of bargain and sale and assignment of certain goods from two of themselves to a third, with intent thereby to obtain emoluments to themselves, is bad, for omitting to shew in what respect the deed was false and fraudulent. Ib.

A first count of an indictment charged that the prisoners, intending to defraud one J. G., did conspire to cheat and defraud J. G., of a certain large sum of money, to wit, 201. The second charged a conspiracy, by false pretences, to obtain from J. G. a large sum of money, to wit, 201., and to cheat and defraud him thereof. The third count charged a conspiracy by false pretences feloniously to steal from J. G. a large sum of money, to wit,

attempt, by false pretences, to obtain from J. G. the sum of 201., The fifth with intent to defraud. and last count charged that the prisoners, by false pretences, did attempt to steal from J. G. a large sum of money, to wit, 201., of the monies of the said J. G. The prisoners were found guilty, and judgment was passed on each count. They were convicted on all the counts, and were sentenced to a distinct punishment on each :—Held, that the fifth and last was a good count, and that the conviction must therefore be affirmed. Reg. v. Bullock, Dears. C. C. 653; 25 L. J., M. C. 92.

An indictment charging that the defendants unlawfully, fraudulently and deceitfully did conspire, combine, confederate and agree together, to cheat and defraud the prosecutor of his goods and chattels, is Sydserff v. Reg. (in error), good. 11 Q. B. 245; 12 Jur. 418—Exch.

An indictment charged that the defendants conspired to cheat and defraud certain liege subjects of the Queen, being tradesmen, of quantities of their goods; that, in pursuance of the conspiracy, the defendant B. fraudulently ordered and obtained upon credit from W. W. and C. W., upholsterers, divers goods of W. W. and C. W. (the count stated a like obtaining on credit from other tradesmen named, and from others whose names were unknown); and that, in further pursuance of their conspiracy, and in order that the goods might be taken in execution and sold, as after mentioned, the defendants ordered the same to be delivered by W. W. and C. W. at the house of B., and they were so delivered and never paid for; and in further pursuance, &c., and in order, &c., B. allowed them to continue in his house till they were taken in execution as after That the defendants, mentioned. in further pursuance, &c., did false-201. The fourth count charged an | ly and fraudulently pretend that certain debts were due from B. to K. and P., two others of the defendants, and K. and P. did, to obtain payment of such fictitious debts, by collusion with B., commence actions against B.; that K. and P. collusively signed judgment against B. in the actions, and issued execution thereon, by virtue of which the goods, before the expiration of the times of credit, were taken in execution, and sold to satisfy the fictitious debts: and so the jurors found the defendants in manner and means aforesaid did cheat and defraud W. W. and C. W. of the goods:—Held, that the indictment was good. Reg. v. King, 7 Q. B. 782; D. & M. 741; 8 Jur. 662; 13 L. J., M. C. 118.

Error being brought upon the judgment:—Held, that the indictment was bad, for that the words alleging conspiracy shewed a design to injure, not tradesmen indefinitely, but individuals, and therefore either the persons should have been named, or an excuse stated for not naming them, and that the allegation of conspiracy was not aided by the overt acts; and that the overt acts themselves did not, either in connexion with the allegation of conspiracy, or independently, amount to indictable misdemeanors. King v. Reg. (in error), 7 Q. B. 782; 9 Jur. 833; 14 L. J., M. C. 172—Exch. Cham.

A count stated that the defendants conspired to cause goods, wares and merchandise, which had been imported into the port of London, whereof duties of customs were then and there due and payable, to be taken and carried away from the port, and to be delivered to the owners thereof, without payment of a great part of the duties of customs so then and there due and payable thereon:—Held, that the gist of the offence being the conspiracy, it was not necessary to specify the goods, wares and mer-

thereon. Reg. v. Blake, 6 Q. B. 126; 8 Jur. 145; 13 L. J., M. C.

An indictment for a conspiracy to obtain goods by false pretences was bad, before 14 & 15 Vict. c. 100, s. 8, if it did not state to whom the goods belonged. Reg. v. Parker, 2 G. & D. 709; 3 Q. B. 292; 6 Jur. 822.

A count charged the defendants with a conspiracy, by false pretences and subtle means and devices, to extort from T. E., one sovereign, his monies, and to cheat and defraud him thereof; the evidence failed to prove that the defendants employed any false pretence in the attempt to obtain the money:—Held, that so much of the count might be rejected as surplusage, and the defendants convicted of the conspiracy to extort and de-Reg. v. Yates, 6 Cox, C. fraud. C. 441.

In an indictment for conspiracy at common law to effect objects prohibited by a statute, it is enough to follow the words of the act of parliament. Reg. v. Rowlands, 2 Den. C. C. 364; 16 Jur. 268; 21 L. J., M. C. 81.

An indictment that C. died possessed of East India stock, leaving a widow; that the defendants conspired, by false pretences and false swearing, to obtain the means and power of obtaining such stock; that in pursuance of such conspiracy, they caused to be exhibited in the prerogative Court of Canterbury a false affidavit made by one of them, in which the deponent stated that C.'s widow had died without taking out administration to C., and that deponent was one of her children; and that the defendants fraudulently obtained to deponent, as one of the children of C., a grant of administration to his estate. On motion to arrest the judgment, on the ground that a charge of conspiracy to obtain the means chandises, or the duties payable and power of obtaining the stock,

did not describe any offence:—Semble, that the statement of the overt act done in furtherance of the objects of conspiracy was so interwoven with the charge of conspiracy itself, as to show an unlawful conspiracy. Wright v. Reg. (in error), 14 Q. B. 148.

But held, that at all events the overt acts in themselves constituted a misdemeanor, on which the court could legally pronounce judg-

ment. Ib.

A count merely charging conspiracy in the same manner, without alleging the overt acts, is bad. *Ib.* 

The defendants were tried at a quarter sessions upon an indictment, one of the counts of which charged a conspiracy, "by divers false pretences against the statute in that case made and provided, the said R. B. of his monies to defraud, against the form of the statute":-Held, that the count sufficiently charged a conspiracy to obtain money by false pretences, and that it must be taken, after verdict, that the conspiracy was one of which a court of quarter sessions had cognizance, under 5 & 6 Vict. c. 38, s. Latham v. Reg. (in error), 9 Cox, C. C. 516; 5 B. & S. 635; 10 Jur., N. S. 1145; 33 L. J., M. C. 197; 12 W. R. 908; 10 L. T., N. S. 571.

A count is good which simply charges that the defendants, unlawfully, &c., did conspire, combine, confederate and agree together, by divers false pretences and indirect means, to cheat and defraud R. of his monies. Reg. v. Gompertz, 9 Q. B. 824; 11 Jur. 204; 16 L. J., Q. B. 121.

In an indictment charging a conspiracy to cheat and defraud J. D. and others of goods, and laying as an overt act the obtaining goods of J. D. and others, the word "others" must mean "others his partners" throughout, and evidence of conspiring to defraud other persons

than J. D. and his partners is admissible. Reg. v. Steel, 2 M. C. C. 246; Car. & M. 337.

An indictment that certain persons "unlawfully, maliciously and seditiously did conspire and agree with each other, and with divers other persons unknown, to raise and create discontent and disaffection amongst the liege subjects of her Majesty, and to excite such subjects to hatred and contempt of the government and constitution of this realm as by law established, and to unlawful and seditious opposition to the government and constitution; and also to stir up jealousies, hatred and ill-will between different classes of her Majesty's subjects, and especially amongst her Majesty's subjects in Ireland, feelings of ill-will and hostility towards and against her Majesty's subjects in other parts of the United Kingdom called England": — Held, that this statement, with or without the additional charge, "and to assume and usurp the prerogative of the crown in the establishment of courts for the administration of law," constituted a definite charge against the several defendants of an agreement between them to do an illegal act. O'Connell v. Reg. (in error), 11 C. & F. 155; 9 Jur. 25.

A count setting forth an agreement between persons "to cause and procure, and aid and assist in causing and procuring, diverse subjects of her Majesty, unlawfully, maliciously and seditiously, to meet assemble together in large numbers, at various times and at different places within Ireland, for the unlawful and seditious purpose of obtaining, by means of the intimidations to be thereby caused, and by means of the exhibition and demonstration of great physical force at such assemblies and meetings, changes and alterations in the government, laws and constitution of the realm by law established," whether or not comprehending the

additional words, "and especially, by the means aforesaid, to bring about and accomplish a dissolution of the legislative union now subsisting between Great Britain and Ireland," and whether or not omitting the words "unlawfully, maliciously and seditiously," does not sufficiently state the illegal purpose of such agreement, and is, therefore bad for uncertainty. Ib.

The word "intimidation," not being vocabulum artis, has not, necessarily, a meaning in a bad sense; and in order to give it legal efficacy, it should at least appear, from the context of the indictment, what species of fear was intended, and upon whom such fear was meant to

operate. Ib.

# Particulars of Overt Acts.

Particulars in an indictment for conspiracy having been ordered of overt acts, the counsel for the Crown were confined within them; but particulars pending the trial having been ordered, of bad debts incurred to the bank by one of the defendants, the Crown was not restrained, next day, the particulars not having been delivered, from giving evidence on that head. Reg. v. Esdaile, 1 F. & F. 213 S. C., Reg. v. Brown, 8 Cox, C. C. 69-Campbell.

If the counts for a conspiracy are framed in a general form, a judge will order that the prosecutor should furnish the defendants with a particular of the charges; and that particular should give the same information to the defendants that would be given by a special But the judge will not compel the prosecutor to state in his particular the specific acts with which the defendants are charged, and the times and places at which those acts are alleged to have occurred. Rex v. Hamilton, 7 C. & P. 448—Littledale.

Where an indictment for conspiracy charges the offence in gen-

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eral terms, the defendant is entitled to particulars of the charge, although there has been a previous committal by a magistrate. Therefore, where an indictment contained counts charging a conspiracy to cheat tradesmen of goods, without mentioning any specific case, or name, time or place:—Held, that the defendant was entitled to such particulars. Reg. v. Rycroft, 6 Cox, C. C. 76—Williams.

## Evidence.

On an indictment for conspiracy, where there is evidence of several persons having engaged therein, what is said by any of them at another time and place respecting the object of the conspiracy is evidence against the others. Rex v. Salter, 5 Esp. 125—Hotham. And see Rex v. *Hammond*, 2 Esp. 719.

So, in an indictment for a conspiracy to cause themselves to be believed persons of large property, for the purpose of defrauding tradesmen, the prosecutor may give various instances of their giving a false representation of their circumstances, as overt acts of the conspiracy. Rex v. Roberts, 1 Camp. 399; 2 Leach, C. C. 987, n.—Ellenborough.

But the wife of one defendant cannot be called on behalf of a codefendant, though the parties appear and defend separately. Rex v. Locker, 5 Esp. 107—Ellenborough.

Nor one defendant who suffers judgment by default. Rex v. Lafone, 5 Esp. 155—Ellenborough.

If, on a charge of conspiracy, it appears that two persons, by their acts, are pursuing the same object often by the same means, one performing part of an act, and the other completing it, for the attainment of the object, the jury may draw the conclusion that there is a conspiracy. Reg. v. Murphy, 8 C. & P. 297— Coleridge.

If a conspiracy is formed, and a

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person joins it afterwards, he is equally guilty with the original conspirators. *Ib.* 

On the trial of an indictment for a conspiracy to procure large numbers of persons to assemble for the purpose of exciting terror in the minds of her Majesty's subjects, evidence was given of several meetings at which the defendants were present, and it was proposed to ask a witness, who was superintendent of the police, whether persons complained to him of being alarmed by these meetings:—Held, that the evidence was receivable, and that it was not necessary to call the persons who made the complaints. Reg. v. Vincent, 9 C. & P. 275— Gurney.

A. was charged with having conspired with J. and others unknown to raise insurrections and obstruct It was proved that A. the laws. and J. were members of a chartist lodge, and that A. and J. were at the house of the latter on a certain day, on the evening of which A. directed the people assembled at the house of J. to go to the racecourse at P., whither J. and other persons had gone:—Held, that, on the trial of A., evidence was receivable that J. had at an earlier part of the day, directed other persons to go to the race-course; and it being proved that J. and an armed party of the persons assembled went from the New Inn:—Held, that, evidence might be given of what J. said at the New Inn, it being all one transaction. Reg. v. Shellard, 9 C. & P. 277—Patteson.

General evidence of the conspiracy charged may be received in the first instance, although it cannot affect the defendant unless afterwards brought home to him, or to an agent employed by him. And the same rule applies where a defendant seeks by such general evidence in the first instance to affect the prosecutor with a conspiracy to suborn witnesses for the destruction

of the defence, provided the proposed evidence is previously opened to the court, as in the case of a prosecution to be proved by conspiracy. The Queen's case, 2 B. & B. 302.

On an indictment for conspiring and unlawfully meeting for the purpose of exciting discontent and disaffection, resolutions passed at a former meeting, in another place, and at which one of the defendants presided, the professed object of which meeting was to fix the meeting mentioned in the indictment, are admissible to shew the intention o such defendant in assembling and attending the meeting in question, at which he also presided. Rex v. Hunt, 3 B. & A. 566.

A copy of these resolutions delivered by such defendant to a witness at the time of the former meeting, as the resolutions then intended to be proposed, and which corresponded with those which the witness had heard read from a written paper, is admissible without producing the

original. Ib.

And large bodies of men having come to the latter meeting from a distance, marching in regular order, it was admissible to shew the character and intention of the meeting, that within two days of the same great numbers of men were seen training and drilling before daybreak, at a place from which one of these bodies had come to the meeting, and on their discovering the persons who saw them, they illtreated them, and forced one of them to take an oath never to be a king's man again; and it was admissible, for the same purpose, to shew that another body of men in their progress to the meeting, on passing the house of one of the persons who had been so ill-treated, expressed their disapprobation at his conduct by hissing. Ib.

An indictment for a conspiracy contained several counts, alleging several misdemeanors on the same day:—Held, that the prosecutor might give evidence of several misdemeanors on different days. Rex v. Levy, 2 Stark. 458—Abbott.

On an indictment for a conspiracy, the letters of one of the defendants to the other are, under certain circumstances, admissible in evidence in his favor, to shew that he was the dupe of the other, and was not himself a participator in the Rex v. Whitehead, 1 C. & P. fraud. 67—Best.

A party may be convicted of a conspiracy to cheat and defraud, by means of a false and fraudulent representation as to the solvency or the trade of another, although the representation was oral, and one for which per se, he would not be civilly liable under 9 Geo. 4, c. 16, s. 14; but the question will be not merely whether the representation false and fraudulent, whether it was made in collusion with the co-defendant, for the purpose of cheating the prosecutor. Reg. v. Timothy, 1 F. & F. 39-Channell.

On an indictment for a conspiracy to defraud by false representations of solvency, the defendants may be convicted who had no knowledge of the transactions which resulted in insolvency, provided they aware of the result, and concurred in the representations in furtherance of the common design, even although they did so with no motive of particular benefit to themselves. Reg. v. Esdaile, 1 F. & F. 213; S. C. nom. Reg. v. Brown, 7 Cox, C. C. 442--Campbell.

Overt acts in conspiracy, though not necessarily laid, and if laid not proved as against all the defendants, may be looked at as shewing the object of the conspiracy. Ib.

Certain wharfingers and their servants were indicted for a conspiracy to defraud by false statements as to goods deposited with them and insured by the owners against fire:-Held, that evidence that false state-

servants, which would be for the benefit of the masters, and that afterwards the servants took fraudulent means to conceal the falsehood of the statements, with evidence that the employers had the means of knowing the falsehood, and knew of the devices used to conceal it, was no evidence to sustain the charge of a fraudulent conspiracy between the employers and servants. Reg. v. Barry, 4 F. & F. 389—Martin.

A prisoner was indicted in one count for obtaining money from the trustees of a savings bank by pretending that a document produced by the wife of T. had been filled up by his authority, and in another count for a conspiracy with the wife of T. to cheat the bank. The wife was not indicted. The evidence of T. having been received in support of the indictment, the prisoner was acquitted on the count for conspiracy, and convicted on the other:—Held, that T.'s evidence was properly received, and that there was no inconsistency in the finding of the jury on the two counts. Reg. v. Halliday, 8 Cox, C. C. 298; 6 Jur., N. S. 514; 29 L. J., M. C. 148; 8 W. R. 423; 2 L. T., N. S. 254.

Where an indictment charges an ordinary conspiracy, it is not necessary to prove a common design between the defendants before proving the acts of each defendant; for the acts of each defendant are only evidence against himself, and may be the only means of establishing the conspiracy. Reg. v. Brittain, 3 Cox, C. C. 77—Coltman.

Information for a conspiracy to cause and procure goods to be imported without payment of part of the duties of customs, by entering the goods as less in quantity and quality than they really were. One of the defendants, B., was a landing-waiter; the other T., who did not appear to take his trial, was a Custom-house agent. According to the course of business at the Cusments were knowingly sent in by the tom-house, certain goods consigned Digitized by Microsoft®

to T. were placed in the custody of B., and, upon the examination of them, entries of the quantity and quality were made by B. and T. respectively in separate books, and the amount of duty was calculated thereupon:—Held, first, that evidence of an entry made by T. in his ledger, purporting to be an entry of the same goods, but varying from the preceding entries in respect to the quantity, was admissible for the purpose of proving the conspiracy, as an act tending towards the object of the conspiracy. Reg. v. Blake, 6 Q. B. 126; 8 Jur. 666; 13 L. J., M. C. 131.

Held, secondly, that evidence of a memorandum made by T. on the counterfoil of a cheque drawn by him, that part of the money arising from the fraud was received by B., was inadmissible, it being a declaration of T. after the principal trans-

action was complete. Ib.

In the course of proving a conspiracy to defraud, carried into effect by prevailing upon the prosecutor to accept bills, a warrant of attorney, given to him for the purpose of inducing him to accept, reciting the acceptance, may be given in evidence, though unstamped. Reg. v.Gompertz, 9 Q. B. 824; 11 Jur. 204; 16 L. J., Q. B. 121.

An indictment for conspiring to defraud the prosecutor may be supported by proof of a conspiracy to obtain his acceptances, though the prosecutor parts with no money, and though he never has intended to take up the acceptances, and though the bills were never in his hands, except for the purpose of his accepting. Ib.

Where an indictment for conspiracy contains several counts, if only a single conspiracy is proved, the verdict may nevertheless be taken on so many of the counts as describe the conspiracy consistently with the

proof. Ib.

In support of an indictment charging a conspiracy to defraud and de-

prive B. of certain lease-hold messuages, whereof B. was lawfully possessed, and to cheat and defraud her of the rents and profits of the messuages; the evidence as to B.'s title was that F., before her death, directed S., her next-of-kin, to convey the messuages to B. on account of a supposed equitable claim of B. to money received by F. S., after the death of F., and before administration, executed an agreement to assign to B., and went with her to the houses, and pointed out the property, and said B. was landlady, and he hoped the tenants would not shuffle with her as they had with B. afterwards received a small sum as rent. There was no proof that F. or S. was ever in possession, and no other evidence of B.'s title: -Held, that there was some evidence of a possession by B. to support the averment in the indictment. Reg. v. Whitehouse, 6 Cox, C. C. 129—Cresswell.

An indictment alleging that I. W., C. W. and J. W., being persons in indigent circumstances, and intending to defraud tradesmen who should supply them with goods upon credit, conspired to cause J. W. to be reputed and believed to be a person of considerable property, and in opulent circumstances, for the purpose and with the intent of cheating and defrauding divers persons being tradesmen, who should bargain with them for the sale to the said I. W. of goods, the property of such last-mentioned persons, of great quantities of such goods, without paying for the same, with intent to obtain to themselves money and other profits, is not supported by proof that C. W. and J. W., being the wife and daughter of I. W., represented that they were in independent circumstances, their income being interest of money received monthly; at another time, when engaging lodgings, that they were not in the habit of living in lodgings, and that they obtained various goods from tradesmen on credit, under circumstances that shewed an intent to defraud, but no proof being adduced that those goods were obtained by reason of any of those general statements. Reg. v. Whitehouse, 6 Cox, C. C. 38—Platt.

A count charging the defendants with conspiring, by divers subtle means and false pretences, to obtain goods and chattels from a tradesman, without paying for them, with intent to defraud him thereof, is supported by proof of overt acts, from which a conspiracy may be inferred, without proof of any such false pretence as is required in an indictment for obtaining goods by false pretences. Ib.

On an indictment against A., B., C., D., E., F., G. and H., for conspiracy to cheat M. by selling a glandered horse as a sound horse, the evidence was, that A., having previously cheated M. by selling him a kicking horse, B., C., D. and E. obtained that horse from M. in exchange for a glandered horse, which he subsequently sold. A., accompanied by G., afterwards sold M. another horse, in which transaction the latter was again defrauded. Some evidence was given to shew that A. was frequently in company with some of the other defendants, and that he was aware of a previous sale of the glandered horse by them, but there was no other evidence to connect him with its sale to M.:— Held, that, in the absence of any evidence clearly leading to the conclusion that A. was a party to that sale, there was no evidence of a conspiracy to go to the jury against Reg. v. Reade, 6 Cox, C. C. 134—Cresswell.

A number of persons was charged with murder, committed by an act done in the course of a conspiracy for the purpose of liberating a prisoner, of which conspiracy he was cognizant:—Held, that acts of that prisoner, within the prison, and articles found upon him, guilty, but have severed in three

were admissible against the person so charged. Reg. v. Desmond, 11 Cox, C. C. 146—Cockburn and Bramwell.

### 7. Trial and Verdict.

An indictment for a conspiracy to defraud is triable at quarter sessions. Latham v. Reg. (in error), 5. B. & S. 635.

A was indicted for conspiring with Y. and Z., and other persons to the jurors unknown. The evidence was confined to A., Y. and Z., and the jury was of opinion that A. conspired with either Y. or Z., but said that they did not know with which. Y. and Z. were thereupon both acquitted:—Held, that A. was entitled to be acquitted also. Reg. v. Thompson, 16 Q. B. 832; 5 Cox, C. C. 166. Reg. v. Denton, Dears. C. C. 3; 17 Jur. 453; 20 L. J., M. C. 183.

Upon a count charging one conspiracy, and one only, against all the defendants therein named, to effect several illegal objects, the jury may find all or some guilty of conspiring to effect one or more of the objects specified. O' Connell v. Reg. (in error), 11 C. & F. 155; 9 Jur. 25.

Where one defendant in conspiracy dies between the indictment and trial, it is no ground of a venire de novo for a mis-trial, if the trial proceeds against both, no suggestion of the death being entered on the record. Reg. v. Kenrick, 5 Q. B. 49; D. &. M. 208; 7 Jur. 848; 12 L. J., M. C. 135.

One of several prisoners indicted for conspiracy may be tried separately, and upon conviction, judgment may be passed on him, although the others, who have appeared and pleaded, have not been  $\mathbf{tried.}$ Reg. v. Ahearne, 6 Cox, C.

Where three prisoners have been jointly indicted for a conspiracy to murder, and severally pleaded not

challenges, and the Crown has, consequently, proceeded to try one of such prisoners:—Held, that, upon conviction of such prisoner, judgment must follow, although the others have not been tried, and that the possibility of the other prisoners being found not guilty (although such a verdict would be a ground for reversing the judgment), is not a sufficient reason for holding such judgment, and all the legal consequences of such conviction of such prisoner, irregular. Ib.

### 8. New Trial.

Where all of several defendants in an indictment for conspiracy are found guilty, if one of them shews himself entitled to a new trial on grounds not affecting the others, the new trial will nevertheless be granted. Reg. v Gompertz, 9 Q. B. 824; 11 Jur. 204; 16 L. J., Q. B. 121.

# XII. DUELLING.

An endeavour to provoke another to commit the misdemeanor of sending a challenge to fight, is itself a misdemeanor indictable, particularly where such provocation was given by a writing containing libellous matter, and alleged in the prefatory part of the indictment to have been done with intent to do the party bodily harm, and to break the king's peace; the sending such writing being an act done towards procuring the commission of the misdemeanor meant to be accomplished. Rex v. Phillips, 6 East, 464; 2 Smith, 550.

If one kills another in a deliberate duel, under provocation of charges against his character and conduct, however grievous, it is murder in him, and his second, and therefore the bare incitement to fight, though under such provocation, is in itself a very high misdemeanor, though no consequence ensues thereon

against the peace. Rex v. Rice, 3 East, 581. See Rex v. Kirwan, 2 B. & A. 462; Reg. v. Young, 8 C. & P. 644.

If a man writes a letter with intent to provoke a challenge, seals it up and puts it into the post-office in Westminster, addressed to a person in the city of London who receives it there, the writer may be indicted for this offence in the county of Middlesex. Rex v. Williams, 2 Camp. 505—Ellenborough.

## XIII. EMBEZZLEMENT BY CLERKS AND SERVANTS.

The Offence, 118.

2. Amounting to Larceny, or Embezzlement, 134.

3. Indictment, 136.

Particulars of Charges, 137.
 Evidence, 138.

# 1. The Offence.

Statute.]—By 24 & 25 Vict. c. 96, s. 68, "whosoever, being a clerk "or servant, or being employed for "the purpose or in the capacity of "a clerk or servant, shall fraudu-" lently embezzle any chattel, mon-"ey or valuable security, which "shall be delivered to or received, "or taken into possession by him "for or in the name or on the ac-"count of his master or employer, " or any part thereof, shall be deem-"ed to have feloniously stolen the "same from his master or employer, "although such chattel, money or " security was not received into the "possession of such master or em-"ployer otherwise than by the ac-"tual possession of his clerk, ser-"vant or other person so employed, "and, being convicted thereof, shall "be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "fourteen years and not less than " five years (27 & 28 Vict. c. 47), "or to be imprisoned for any term

" not exceeding two years, with or " without hard labour, and with or "without solitary confinement, and "if a male under the age of sixteen "years, with or without whipping." (Former provision, 7 & 8 Geo. 4, c. 29, s. 47, and this statute repealed 39 Geo. 3, c. 85.)

What is.]—Embezzlement necessarily involves secrecy and concealment. If, therefore, instead of denying the appropriation of property, the prisoner, in rendering his account, admits the appropriation, alleging a right in himself, no matter how unfounded, or setting up an excuse, no matter how frivolous, his offence in taking and keeping is no embezzlement. Reg. v. Norman,Car. & M. 501—Cresswell.

It was the duty of a servant authorized to receive money for his. employer to account to his employer on the evening of every day for the money received during the day by him for his employer, and to pay over the amount. He received three sums for his employer on three different days, and neither accounted for those sums nor paid them He never denied the receipt of them, or tendered any written account in which they were omitted:—Held, that, if he wilfully omitted to account for these sums and pay them over on the respective days on which he received them, these were embezzlements, and that such wilful omissions to account and pay over were equivalent to a denial of the receipt of them. Reg. v. Jackson, 1 C. & K. 384—Coleridge.

It was the duty of a clerk to receive money for his employer and pay wages out of it, and to make entries of all monies received and paid in a book, and to enter the weekly totals of receipts and payments in another book, upon which last book he from time to time paid over his balances to his employer.

payments in his first book amounting to 25l., he entered them in the second book as 35l. and, two months after, in accounting with his employer, by these means made his balance 10*l*, too little, and paid it over accordingly:-Held, that he could not be convicted of embezzlement, without it being shewn that he had received some particular sum on account of his employer, and had converted either the whole or part of that sum to his own use. Reg. v. Chapman, 1 C. & K. 119—Williams.

If a person whose duty it is to receive money for his employer, receives money and renders a true account of all the money he has received, he is not guilty of embezzlement if he absconds and does not pay over the money; but, if he had received the money, and had rendered an account in which it was omitted, this would be evidence to shew that he had embezzled the amount. Reg. v. Creed, 1 C. & K. 63—Erskine.

The prisoner, having been intrusted by his master with a number of articles of soldiers' clothing for the purpose of selling them, and ten pounds in silver, to enable him to give change, sailed in a ship for the coast of Africa, having, before his departure, written to his master to say that he would send the account together with a remittance, from Madeira:—Held, that he could not be convicted of embezzlement, having received the goods from his master himself, and not from another for and on account of his master; but that he might have been convicted of larceny. Reg. v. Hawkins, 1 Den. C. C. 584; T. & M. 328; 14 Jur. 513.

The prisoner had as a servant, in the course of his duty, received from a fellow-servant money paid to that servant for his master by another servant, who had received it from the customers. It was the duty of The clerk having entries of weekly the prisoner, after such receipt, to

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hand the money to another servant (the cashier) of his master, but instead of handing it over, he fraudulently retained it:—Held, that this was embezzlement. Reg. v. Masters, 1 Den. C. C. 332; T. &. M. 1; 2 C. & K. 930; 3 New Sess. Cas. 326; 12 Jur. 942; 18 L. J., M. C. 2; 3 Cox, C. C. 178.

The prisoner was employed to superintend the grinding of corn at the mill of a county gaol. was his duty to direct any person bringing grain to be ground at the mill to obtain a ticket at the porter's lodge. This ticket was his order for grinding the grain so brought to him, and it would have been a breach of his duty to have ground any grain without a ticket. Having ground the corn, he was to receive the money, and hand it over to the governor of the gaol. The prisoner had received money from different persons, whose corn he had ground without the production of a ticket, and appropriated it to his own use: -Held, that he had not received the money on account of his master, and was not therefore guilty of embezzlement. Reg. v. Harris, Dears. C. C. 344; 2 C. L. R. 464; 18 Jur. 408; 23 L. J., M. C. 110; 6 Cox, C. C. 363.

The prosecutor gave some marked money to J. W. to expend at his (the prosecutor's) shop, for the purpose of detecting a servant, of whom the master had suspicions. The servant was convicted of embezzling a portion of the marked money:— Held, that the conviction was right. Reg. v. Gill, Dears. C. C. 289; 18 Jur. 70; 23 L. J., M. C. 50; 6 Cox, C. C. 295,

The prosecutor had contracted with a railway company for finding and providing them with necessary horses and carmen for the purpose of conveying and delivering to the customers of the company the coals of the company in their own waggons, and that he or his carmen

and deliver to the company's coal manager all monies received in payment for coals so delivered. delivery notes, as well as receipted invoices of the coals, were handed to the carmen of the prosecutor, and the former were taken to his office, but the invoices receipted by the company were left with the on payment of the customers The prisoner was the amount. servant of the prosecutor, employed as his carman in the delivery of coals pursuant to the contract, and it was his duty to pay over direct to the clerks of the company such monies as he might receive for coals. He delivered coals to one of the company's customers, and brought the delivery order to the office to be entered; he received for the coals 5l. 10s., leaving the receipted invoice with the customer, which sum he converted to his own use. He was convicted of embezzling the monies of the prosecutor, who had contracted with the company: - Held, that there was such privity between the prisoner and the company as to make the prisoner the agent of the company in receiving the money, and that such money was not received for or on account of the prosecutor, but for and on account of the company, and that he was wrongly convicted of embezzling the prosecutor's money. Reg. v. Beaumont, Dears. C. C. 270; 2 C. L. R. 614; 18 Jur. 159; 23 L. J., M. C. 54; 6 Cox, C. C. 269.

A. was a carrier, residing at Somerton and going from that place to Stoke and back, employed, however, only between the glove sewers at Somerton and the manufacturers at Stoke, in carrying the gloves from and to the one and the other. The manufacturers knew nothing of the sewers, but A. gave the name of and took out a number for any woman desiring to be employed, received unsewn gloves from the manshould day by day duly account for ufacturers, and conveyed them to

the women at Somerton, taking! back the gloves when finished, and receiving the amount due to the women for their work. The manufacturers looked to the women for the work; but if any were missing, and the women not found, they held the prisoner accountable for In accordance with this course of proceeding, A. received sewn gloves from two of the women, delivered them to the manufacturers, and received the amount due for the work, but fraudulently applied the money so received to his own use. He was tried for and convicted of, embezzling the money of the two women:—Held, that the relation of master and servant did not subsist, but A. was a mere trustee, and was only guilty of a breach of trust, and not of embezzlement, and therefore the conviction was wrong. Reg. v. Gibbs, Dears. C. C. 445; 1 Jur., N. S. 118; 24 L. J., M. C. 62; 6 Cox, C. C. 455.

An instrument in the following form is a contract for service by a lahourer, and not a contract of partnership:—"S. W. engages to take charge of the glebe land of the Rev. A. B., his wife undertaking the dairy and poultry, at 15s. a week, till Michaelmas, 1850, and afterwards at a salary of 25l. a year, and a third of the clear annual profits, after all the expenses of rent, rate, labour and interest on capital, &c., are paid, on a fair valuation, made from Michaelmas to Michaelmas. Three months' notice on either side to be given, at the expiration of which the cottage to be vacated by S. W., who occupies it as bailiff, in addition to his salary. —March 12th, 1850.—(Signed) A. B., S. W."-The prisoner was directed to account, and was in the habit of accounting, with the wife of the prosecutor. On the 4th Octoher, the prisoner, in accounting with her, denied the receipt of two

sums of money which he had received for and on account of his master, and appropriated them to his own use:—Held, that he was properly convicted of embezzlement, although Michaelmas was the time agreed upon when a valuation was to take place, and the profits were to be ascertained. Reg. v. Wortley, T. & M. 636; 2 Den. C. C. 333; 5 Cox, C. C. 382; 15 Jur. 1137; 21 L. J., M. C. 44.

The prisoner was convicted of embezzlement. It was his duty to receive remittances from the customers of his masters, to enter them to the credit of such customers in a day or cash-book, and to enter the whole amount received by him on the credit side of a banker's deposit account, and to pay in the amount to the credit of the prosecutors with their bankers; and it was his duty afterwards to post the amounts in a ledger, which contained the accounts of the different customers. The prisoner received a remittance, which he appropriated to his own use; he made an entry of this amount in the ledger to the credit of the customer, but he made no entry of its receipt:-Held, that the conviction was right, as the entry made in the ledger did not exempt the prisoner from the operation of the 47th section of the 7 & 8 Geo. 4, c. 29. Reg. v. Lister, Dears. & B. C. C. 118; 2 Jur., N. S. 1124; 26 L. J., M. C. 26.

A. was indicted for embezzling H.'s goods, and for larceny of H.'s goods; B. for receiving goods, the property of H., knowing them to have been stolen. A. was found guilty of embezzling only, and B. for feloniously receiving:—Held, that the conviction of B. was right, for 7 & 8 Geo. 4, c. 29, s. 47, enacts, that every person who has embezzled within the meaning of that section "shall be deemed to have feloniously stolen from his master," and that being so, B.'s offence was

properly described in the count for receiving. Reg. v. Frampton, 8 Cox, C. C. 16; 4 Jur., N. S. 566.

By Clerks and Servants. -A. gave his clerk 5l., out of which he was to pay for an advertisement; he paid 11. but told A. he had paid  $2l. \ 0s., 6d.,$ and accounted with A. accordingly:—Held, no embezzlement. Rex v. Murray, 5 C. & P.

145, n.; 1 M. C. C. 276.

A clerk who received six bank notes on his master's account, in payment of a particular debt, made a false entry in his master's book, with a fraudulent intent to conceal the payment of that sum, but afterwards paid to the master the identical notes which he had received, applying them, in his account, to another debt received by him for his master: - Held, that he was guilty of embezzlement, in respect of these six notes. Rex v. Hall, 3 Stark. 67—Bayley.

It is felony for the confidential clerk of a merchant to take a bill of exchange, unindorsed, from the bill box, and convert it to his own use, although he was in the habit of transacting the cash concerns of the house from week to week; for, as it had not been delivered to him for such purpose by his employer, it is a tortious taking from the possession of the master. Rex v. Chipchase, 2 Leach, C. C. 699; 2 East,

P. C. 567.

It was the duty of a clerk to receive monies daily at N., to enter all such monies so received in a book, and to remit the amount weekly to L. His entries were all correct, and admitted the receipt of all the monies; but he did not remit them to L., as was his duty:— Held, no embezzlement. Rex v. Hodgson, 3 C. & P. 422—Vaughan.

A person employed upon commission to travel for orders and collect debts, was clerk within 39 Geo. 3, c. 85, and might have been inhe was employed by many different houses on each journey, and paid his own expenses out of his commission on each journey, and did not live with any of his employers, nor act in any of their countinghouses. Rex v. Carr, R. & R. C. C. 198.

A banker's clerk taking money from the till, intending to embezzle it, is guilty of felony, although the cheque of a customer is left in lieu of it; if that customer has really no cash in the banker's hands, though both he and the banker may suppose he has, and if the cheque is drawn by the customer, not to pledge his own credit with the bank, or draw out money of his own, but to draw out money the prisoner falsely pretends to have in his name. Rex v. Hammon, R. & R. C. C. 221; 2 Leach, C. C. 1083; 4 Taunt. 304.

A person received 71. 2s. 6d. in his capacity of clerk to overseers of a parish, and made an entry in a book of the receipt of that sum accordingly, and placed the money with other sums in his possession; the entry of 71. 2s. 6d. was afterwards erased, and 5l. 6s.  $10\frac{1}{2}d$ . substituted for it, and the prisoner only accounted to the parish officers for 51. 6s.  $10\frac{1}{5}d$ . On an indictment for embezzling 1l. 15s. 7d., and conviction thereon: -Held, that as the prisoner might have paid over the whole of what he received for the 71. 12s. 6d., and have taken the 1l. 15s. 7d. from other monies he received. he was improperly convicted. v. Tyers, R. & R. C. C. 402.

If a clerk receives money from his master to pay away on his master's account, and he states in his accounts that one of the payments was to a greater amount than it really was, this will be no embezzlement. Rex v. Murray, 5 C. & P. 145; 1 M. C. C. 276.

A person whose duty it is to obtain orders when and where he dicted for embezzlement, although likes, and to forward them to his principal for execution, and then has three months within which to collect the money for the goods sent, is not a clerk or a servant. Reg. v. Mayle, 11 Cox, C. C. 150  $-\mathrm{Russell}$  Gurney.

If such a person, at the request of his principal, collects a sum of money from a customer, with the obtaining of whose order he has nothing to do, he is a mere volunteer, and is not liable to be prosecuted for embezzlement if he does not pay over or account for the

money so received. 16.

The prisoner was engaged by U. at weekly wages to manage a shop. U. assigned all his estate and effects to R., and a notice was served on the prisoner to act as the agent of R. in the management of the shop. For fourteen days afterwards R. received from U. the shop monies. Then the shop money was taken by U. as before. The prisoner received his weekly wages from U. during the whole time. Some time after a composition deed was executed by R. and U., and U.'s creditors, by which R. reconveyed the estate and effects to U.; but this deed was not registered until after the embezzlement charged against the prisoner: -Held, that he was the servant of U. at the time of the embezzlement. Reg. v. Dixon, 19 L. T., N. S. 384; 17 W. R. 189; 11 Cox, C. C. 178 —C. C. R.

By Servants. —A servant in the employment of two persons, as partners, must be considered as the servant of each. Rev v. Leech, 3

Stark. 70—Bayley.

If a servant receives money on his employers' account, and embezzles it, he is guilty of a felony, although they had no right to it, and were wrong-doers in receiving it. Rex v. Beacall, 1 C. & P. 312, and Rex v. Wellings, ib. 454, 457.

So, if the party embezzling is employed as the servant of a corporation, although not duly appointed one of his barges, to carry out and

their servant, even under their common seal.

A., being one of several proprietors of a Hereford and Birmingham coach, horsed it from Hereford to Worcester, and employed B. to drive it when he did not himself drive it; B. having all the gratuities as well when A. drove as when B. himself did so. It was the duty of B., on each day when he drove, to tell the book-keeper at Malvern how much money he had taken; the book-keeper entering that sum in a book and on the way bill, together with what he had taken himself; and he then had to pay over the latter to B., who was to give the two sums to A. B. gave true accounts to the book-keeper, who made true entries; but B. accounted for smaller sums to A., saying that those were all, and paid over to A. these smaller sums. All the proprietors were interested in the money; but A. was the person to receive it, and he was accountable to his co-proprietors:—Held, that this was embezzlement; and that B. was rightly described in the indictment as the servant of A., and that the money embezzled was properly laid as the money of A. Reg. v. White, 8 C. & P. 742— Patteson.

Where the prosecutor gave his servant a five-pound note to get changed, which he did, and made off with the change:—Held, that it was an embezzlement and not a larceny. Rex v. Sullens, Car. C. L. 319; 1 M. C. C. 129.

If a servant, to whom goods have been delivered by his master to carry to a customer, sells them and converts the money to his own use. he is guilty of felony; for the possession is not out of the master by such delivery. Rex v. Bass, Leach, C. C. 251; 2 East, P. C. 566, 698.

Where the owner of a colliery employed the prisoner, as captain of

sell coal, and paid him for his labour by allowing him two thirds of the price for which he sold the coals above the price charged at the colhery:—Held, that the prisoner was a servant within the meaning of 39 Geo. 3, c. 85; and having embezzled the price, he was guilty of larceny within the meaning of that act. Rex v. Hartley, R. & R. C. C. 139.

If a servant secretes money which his master has marked and sent by a friend to make a purchase at his shop, with a view to try the honesty of his servant, it is a felonious breach of trust, and an embezzling, and not a larceny at common law. Rev v. Headge, 2 Leach, C. C. 1033; R. & R. C. C. 160: S. P., Rex v. Whittingham, 2 Leach, C. C. 912.

A man was sufficiently a servant within 39 Geo. 3, c. 85, although he was only occasionally employed when he has nothing else to do. Rex v. Spencer, R. & R. C. C. 299: S. P., Reg. v. Tongue, Bell, C. C. 289; 30 L. J., M. C. 49.

And it is sufficient, if he was employed to receive the money he embezzled, although receiving money may not be in his usual employment, and although it was the only instance in which he was so em-

ployed. Ib.

If a servant, immediately on receiving a sum for his master, enters a smaller sum in his master's books, and ultimately accounts to his master for the smaller sum, he may be considered as embezzling the difference at the time he makes the entry; and it will make no difference though he received other sums for his master on the same day, and in paying those and the smaller sum to his master together he might give his master every piece of money or note he received at the time he made the false entry. Rex v. Hall, R. & R. C. C. 463; 2 Stark. 67.

Upon an indictment for embez-

prisoner was a drayman in the employment of the prosecutors, who were brewers, and that his duty was to sell porter at a certain fixed price only, viz., 9s. 6d. per dozeu. He sold some at 6s., but did not receive the money for some time. the interval the customer had informed the prosecutors of the transaction, and they told him to pay the money when the prisoner came for it. The prisoner accordingly received it, and did not account for it:—Held, that the evidence was sufficient to support the indictment. Reg. v. Aston, 2 Cox, C. C. 234-Patteson.

A. was employed to lead a stallion, and he was to charge 30s. a mare, and not take less than 20s. He received the sum of 6s. for the covering of a mare:—Held, no embezzlement, as the sum was not received by virtue of his employment. Rex v. Snowley, 4 C. & P. 390— Littledale and Parke.

A person employed by A. to sell goods for him at certain wages may be convicted of embezzlement as the servant of A., though at the same time employed by other persons and for other purposes. Reg. v. Batty, 2 M. C. C. 257.

A servant may be found guilty of embezzlement, though he is not a general servant, and is employed to receive in a single instance only. Rex v. Hughes, 1 M. C. C. 370.

Who are Clerks or Servants.]— One who was employed at a yearly salary under the appellation of accountant and treasurer to the overseers of a township, whose duty it was to receive all monies receivable or payable by them, was a clerk and servant within 39 Geo. 3, c. 85. Rex v. Squire, 2 Stark, 349; R. & R. C. C. 349.

Embezzlement by one who is neither clerk nor servant, nor in any respect under the control of the person by whom he is in a single inzling 6s. it was proved that the stance only requested to receive

monies, was not punishable under 7 & 8 Geo. 4, c. 29, s. 49, as he did not come within the description of clerk, or servant, or a person employed for the purpose of, or in the capacity of a clerk or a servant. Rex v. Nettleton, 1 M. C. C. 259.

A person employed to collect the sacrament money from the communicants is not the servant of the minister, churchwardens or poor, so as to be within 7 & 8 Geo. 4, c. 29, s. 47, if he embezzles the money. Rex v. Burton, 1 M. C. C. 237.

The prisoner had worked for the prosecutor, sometimes as a regular labourer and sometimes as a roundsman; but at the time in question, he not being at all in the prosecutor's service, was sent by the prosecutor to get a cheque cashed at a banker's, for doing which he was to be paid sixpence. He got the cash, and made off:—Held, no embezzlement, as the prisoner was not a servant of the prosecutor within 7 & 8 Geo. 4, c. 29, s. 47. Rex v. Freeman, 5 C. & P. 534—Parke.

A person hired by a market gardener to do a day's work, and who is requested by his employer to take some vegetables to market and sell them, and bring back the produce, is a servant to his employer in respect of such employment, within 7 & 8 Geo. 4, c. 29, s. 47. Reg. v. Winnall, 5 Cox, C. C. 326—Erle.

Being employed as above mentioned, he sold four pots of potatoes, and received the money. He sold four other pots, but did not receive the money. On his return to his master, he stated correctly the price he sold the potatoes for, but said that he would settle with him on a subsequent day, as he had not received the money, and did not offer the sum received, or say he had been paid for a part, and subsequently made the same excuse, and never paid any part of the money:—Held, that this was not embezzlement, unless he, when he said

meant that he had not received any part of it. *Ib*.

A. was a cashier and collector to commission agents. He was paid partly by salary, and partly by percentage on the profits, but was not to contribute to the losses, and had no control over the management of the business:—Held, that he was a servant within the 7 & 8 Geo. 4, c. 29, s. 47, not a partner. Reg. v. M'Donald, L. & C. 85; 9 Cox, C. C. 10; 31 L. J., M. C. 67; 7 Jur., N. S. 1127; 10 W. R. 21; 5 L. T., N. S. 330.

B., being in difficulties, assigned all his book debts, estate and effects to trustees for the benefit of creditors. He was employed by the trustees at a salary to manage the business and to collect the debts for them. He received the amount of two of the debts, and did not account for it:—Held, first, that he was not a clerk or servant within the meaning of the act. Reg. v. Barnes, 8 Cox, C. C. 129—Byles.

Held, secondly, that, inasmuch as the debts, being choses in action, could not be legally assigned, he had received only money which was in law, though not in equity, his own; and, therefore, that he could not be guilty of embezzling it. Ib.

A bailiff of a county court who has fraudulently appropriated the proceeds of levies made under the process of the county court, cannot for this misconduct be convicted as a servant of the high bailiff with having embezzled the monies of the high bailiff his master. Reg. v. Glover, L. & C. 466; 9 Cox, C. C. 500; 10 Jur., N. S. 710; 33 L. J., M. C. 169; 12 W. R. 885; 10 L. T., N. S. 582.

and never paid any part of the money.

A person who is employed to get orders for goods, and to receive payment for them, but who is at liberty to get the orders and receive the money where and when he bezzlement, unless he, when he said he had not received the money, mission on the goods sold, is not

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a clerk or servant within 24 & 25 Vict. c. 96, s. 68. Reg. v. Bowers or Bower, 1 L. R. C. C. 41; 12 Jur., N. S. 550; 35 L. J., M. C. 206; 14 W. R. 803; 14 L. T., N. S. 671.

The prosecutor was agent to a railway company for delivering goods. He employed his own servants, of whom the prisoner was one, his own drays and horses, and was answerable to the company for the money received by his servants for the carriage of goods. It was the prisoner's duty to go out with a dray, to take with him goods, and a delivery-book handed to him by a clerk of the company, to deliver the goods and receive the amount of carriage, and to account for monies received to the clerk of the company. prisoner embezzled certain sums which he had received as due to the company, and for which he had given receipts in the company's name:—Held, that, although the money was received in the name of the company, it was received on the account of the prosecutor, his master, and that a conviction for em-Reg. v. bezzlement was right. Thorpe, Dears. & B. C. C. 562; 4 Jur., N. S. 466; 27 L. J., M. C. 264; 8 Cox, C. C. 29.

The prisoner kept a refreshment house at B., and whilst doing so was engaged by the prosecutors, manure manufacturers, to get orders, which they supplied from their stores. He was to collect the money and send it at once to them, and also to furnish weekly accounts. He was paid by commission, and it did not appear that he had undertaken to give any definite time or labour to the business, but he was to act in a particular district, and was called agent for the B. district. He was to go through the country, see the farmers and get orders, and during the season was to be continually among the farmers. Subsequently the prosecutors rented stores at B., which were placed under the prisoner's control, and from

them he supplied orders he obtained. The first mode, however, or the mixed mode, might have been resorted to, according to the convenience of the prosecutors. After some time a proposal was made to a guarantie society to insure the prosecutors in respect to their connexion with the prisoner. This proposal was signed by the prisoner. It was a printed form, issued by the society, and contained a notice that some salary must be payable, or the society would not insure. stated that the prisoner's salary was 11. a year besides commission, estimated at 65*l*. a year. At this time the prosecutors had agreed to give the salary of 1l. a year. The prisoner was allowed to get in arrear, and was treated by the prosecutors as a debtor in respect of the arrears. Having, however, received money from certain customers, he fraudulently returned their names as not having paid, and for this he was tried and convicted of embezzlement:—Held, that the conviction could not be sustained, as it was not established by the evidence that the prisoner was the servant of the prosecutors. Reg. v. Walker, Dears. & B. C. C. 600; 27 L. J., M. C. 207; 8 Cox, C. C. 1.

A. was employed at a railway station belonging to four different companies, and which was maintained out of a joint fund. servants at this station were appointed and paid, and might be dismissed, by a committee of directors of the several companies. A.'s duty was to deliver parcels which arrived at the station by the trains of the different companies, and to pay over the money received for them to the chief clerk of the parcels office. The chief clerk then paid over such money to the cashier of the committee, who kept a separate account for each company, and paid the money over directly to the company to which it belonged, or its bankers, A. having embezzled money received by him in the course of his duty, he was charged in different counts of an indictment as being the servant of the particular company whose money he had embezzled, of the four companies, of the committee, and of the station master:—Held, that, at all events, he was properly charged as being the servant of the four companies. Reg. v. Bayley, 2 Jur., N. S. 1171; 26 L. J., M. C. 4; 7 Cox, C. C. 179; Dears. & B. C. C. 121.

B., in an answer to an application, was informed by letter from the prosecutors, "We are not disposed to appoint any agent at N., but for all business you do for us we shall be happy to pay you a commission." He afterwards obtained some orders, and misappropriated some monies received by him. The jury found that it was his duty to account to the prosecutors for any money he might receive for them immediately on receipt of it:—Held, that B. was not a clerk or a servant, and could not be convicted of embezzlement. Reg. v. May, L. & C. 13; 8 Cox, C. C. 421; 7 Jur., N. S. 147; 30 L. J., M. C. 81; 3 L. T., N. S. 680.

A. was indicted for embezzlement. He was engaged by the prosecutor as a commercial traveller, to be paid by commission, and he was at liberty to obtain orders for other persons:—Held, that there was evidence of his being a servant to the prosecutor. Reg. v. Tite, L. & C. 29; 8 Cox, C. C. 458; 7 Jur., N. S. 556; 30 L. J., M. C. 142; 9 W. R. 554; 4 L. T., N. S. 259.

A butty collier, who received a certain sum for every ton of coal he raised, was also allowed to sell coal for his employer, the owner of the It was his duty to pay colliery. over the gross money received on such sales, and he was subsequently allowed a poundage thereon. Having converted money received for coal to his own use, he neglected to account for it:—Held, that although the sale of the coal was not | C. 516.

compulsory, he was servant to the owner of the colliery; so as to support an indictment for embezzlement. Reg. v. Thomas, 6 Cox, C.

C. 403—Crompton.

Indictment charged a person, who was a solicitor, with embezzlement. It appeared from his appointment as entered in the minute book of the company, that he was a land agent to the company, and that in the course of his duties he collected the rents of houses, refreshment-stalls, book-stalls, &c., and should have paid the sums over to the company, and that he managed the parochial assessments, as to the justness of claim. His salary was 300l. a year, and an extra sum was allowed for travelling expenses:—Held, that he was a clerk or a servant. Reg. v.Gibson, 8 Cox, C. C. 436—Chambers, C. S.

A., who had been a farm servant of B., but who had ceased to be so, was employed by B. to collect his debts, it being B.'s intention to go to America, and to take A with him and set him up there in business for himself. There was no agreement for any remuneration to be paid by B. to A. for collecting the debts:— Held, that A. could not be convicted of embezzling the sums received by him on behalf of B. Reg. v. Hoare, 1 F. & F. 647—Wightman.

Receipt by Virtue of Employment. -Embezzlement of money by a servant not authorized to receive it, was not within 7 & 8 Geo. 4, c. 29, Rex v. Thorley, 1 M. C. C. s. 47. 343.

If a servant generally employed by his master to receive sums of one description, and at one place only, is employed by him in a particular instance to receive a sum of a different description and at a different place, this latter sum was to be considered as received by him by virtue of his employment, within 39 Geo. Rex v. Smith, R. & R. C. 3, c. 85.

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A clerk, intrusted to receive money at home from out-door collectors, received it abroad from out-door customers:—Held, that such a receipt of money might be considered, by virtue of his employment, within 39 Geo. 3, c. 85, although it was beyond the limits to which he was anthorized to receive money for his employers. Rex v. Beechey, R. & R. C. C. 319.

A. was convicted on an indictment charging him with embezzle-He was storekeeper and clerk at a county gaol, and it was no part of his duty (which was defined by written instructions) to receive money, but he had from time to time received monies in the absence of the governor of the gaol, and to the knowledge of some of the justices. It was submitted that he had not received the money by virtue of his employment, and that that question ought to be left to the jury; but the recorder directed the jury that if they believed that A. received the money, he did receive it by virtue of his employment:— Held, that the question whether he received the money by virtue of his employment ought to have been left to the jury, and that the conviction was wrong. Reg. v. Arman, Dears. C. C. 575; 1 Jur., N. S. 1115, 1177; 7 Cox, C. C. 45.

The prisoner was indicted for embezzling monies received by him by virtue of his employment as clerk to North and others, his masters. It is for the jury to say if the relation of master and clerk existed between the prosecutor and prisoner. Reg. v. Chater, 9 Cox, C. C. 1.

By Clerks of Joint Stock Companies. - A. was indicted for embezzlement whilst clerk to B. and others. A. was secretary and cashier to a company calling themselves "The R., M. and H. Coal Company (Limited) "; the number of members exceeded twenty; the name of

shares were transferrable without the consent of the other shareholders: and a minute-book, in which resolutions were entered, was kept. certificate of incorporation was put in evidence:—Held, that he was rightly convicted as the servant of B. and others, there being no evidence which ought to have been left to the jury that the company was incorporated. Reg. v. Frankland, L. & C. 276; 9 Cox, C. C. 273 9 Jur., N. S. 388; 32 L. J., M. C. 69; 11 W. R. 346; 7 L. T., N. S. 799.

A clerk of a banking company, established under 7 Geo. 4, c. 46, may be convicted of embezzling the money of the company, although he is a shareholder or partner in such company. Reg. v. Atkinson, Car. & M. 525; 2 M. C. C. 278.

By Collectors of Rates. \—A. was employed by the overseers of a parish to collect poor-rates on their account. As their agent he demanded the amount of a rate from the landlord of a house who usually paid his tenant's poor-rates; he entered the amount in his book as uncollected and as legally excused, and embezzled the sum:—Held, that although the overseers might not have been able to enforce the payment of the sum so embezzled, he received it in virtue of his employment, and on account of his employers, and that it was not necessary to lay the money as the joint property of the churchwardens and overseers. Reg. v. Adey, 4 New Sess. Cas. 360; 1 Den. C. C. 571; T. & M. 296; 3 C. & K. 339; 14 Jur. 556; 19 L. J., M. C. 149; 4 Cox, C. C. 208.

A collector of poor's-rates, employed by the overseers, is properly charged with embezzlement, as servant to the overseers, although there are churchwardens for the same parish, who took part in mak-

ing the rate. Ib.

In such case it is sufficient to dethe company was over the door; the scribe the money received by the collector for the rate as the property of the overseers only, naming them. Ib.

A collector of poor's-rates, as a servant to the overseers, has authority to receive the rates from the landlord, if he will pay them to him. Ib.

Under an order of the Poor Law Commissioners, in pursuance of 4 & 5 Will. 4, c. 76, s. 46, the board of guardians of a union appointed A. to the office of collector of rates for the S. district, which district formed a part of the union. In the order of the Poor Law Commissioners, the duties of the collector, and the compensation he was to receive, were fully set forth, and upon the receipt of the order the guardians appointed him verbally, which appointment was afterwards submitted for approval to the Poor Law Commissioners, and ratified by them. The power of dismissal rested with the Poor Law Commissioners alone. The collector, on his appointment, gave a bond for the proper performance of his duties to the guardians, and to them he was bound to give in a statement of his accounts week-There were separate rates for each parish or district of the union, and the duty of the collector was to collect the rates of the S. district, and pay in the amount to a banker, to the credit of the overseers of that district, they alone having the right of disposing of it. Out of this sum the overseers paid the collector a per centage for his services:—Held, that an indictment for embezzlement was not sustainable, there being no such service to any one as the 7 & 8 Geo. 4, c. 29, s. 47, required, the collector being, under the circumstances, an independent officer. C. 306.

Commissioners, founded on 4 & 5 Will. 4, c. 76, s. 46, the board of guardians of a union appointed A. an assistant overseer of a district indictment, by falsely telling them

Reg. v. Truman, 2 Cox, C. Under an order of the Poor Law

in the union, of which the township of F. formed a part, and his duty was to assist the overseers of each of the townships of the district. was paid a salary by the guardians. A. received sums for poor-rate from ratepayers of the township of F., which he ought to have paid over to the bankers of the overseers of that township, instead of which he embezzled them:—Held, that A. was not indictable for embezzling this money as the money of the overseers, as he was not their servant; and that he was not indictable for this embezzlement as the servant of the guardians, because, if he was their servant, it was not their money. Reg. v. Townsend, 2 C. & K. 168. 1 Den. C. C. 167; 2 Cox, C. C. 24.

The treasurer to the guardians of the poor of Birmingham, appointed under a local and personal act, is a servant of the guardians, and as such is indictable for embezzlement. Reg. v. Welch, 2 C. & K. 296; 1 Den. C. C. 199; 2 Cox, C. C. 85.

The not accounting for a portion of money received for the guardians was an embezzlement, although no precise time could be fixed at which it was the prisoner's duty to pay over the money alleged to be embezzled. *Ib.* 

G. was convicted upon an indictment for embezzlement. It was his duty, as the assistant overseer of a township, to collect the rates; and the course was, upon receipt, to pay them into a bank to the account of the overseers' receipts for the sums so paid. It was his duty also to enter the rates when received in a book, and at the audit he charged himself by the entries in his book and discharged himself by the receipts of the overseers. Having misappropriated certain which he duly entered in the book when received, he fraudulently obtained from the overseers receipts for the several sums stated in the

Fish. Dig.—9. Diaitized by Microsoft® that he had paid the money into the bank. These receipts he produced to the auditor, and so deceived him as to his having handed over the monies:—Held, that he was rightly convicted, and that the fact of his entering the sums, when received, in his book, did not alter the character of his offence. Reg. v. Guelder, Bell, C. C. 284; 8 Cox, C. C. 372; 30 L. J., M. C. 34; 6 Jur., N. S. 1214; 3 L. T., N. S. 337.

An assistant overseer of a parish, elected by the parishioners in vestry, under 59 Geo. 3, c. 12, s. 7, who fix his duties and salary, is to be deemed the servant of the inhabitants of the parish, and to receive money collected by him for the poor rate levied upon the parish as such servant, and may be so described in an indictment for embezzling such monies so received. Reg. v. Carpenter, 1 L. R., C. C. 29; 12 Jur., N. S. 380; 35 L. J., M. C. 169; 14 W. R. 773; 14 L. T., N. S. 572.

By Officers or Members of Benefit Clubs and Friendly Societies.] By 31 & 32 Vict. c. 116, s. 1, "any person, being a member of "any co-partnership, or being one of "two or more beneficial owners of "any money, goods or effects, bills, "notes, securities or other property, "shall steal or embezzle any such "money, goods or effects, bills, " notes, securities or other property "of or belonging to any such co-" partnership or to such joint bene-"ficial owners, every such person "shall be liable to be dealt with, "tried, convicted and punished for "the same as if such person had not " been or was not a member of such "co-partnership or one of such ben-"eficial owners."

By Officers or Members of Savings Banks, Benefit Clubs, and Friendly Societies.]—In an indictment against the clerk of a savings bank for embezzlement, he is properly described as clerk to the trustees,

though elected by the managers. Rex v. Jenson, 1 M. C. C. 434.

A member of and secretary to a society, fraudulently withholding money received from a member to be paid over to the trustees, may be indicted for embezzlement, and may be stated to be the clerk and servant of the trustees; and the money may be properly stated to be their property, though the society is not enrolled, and though the money ought in the ordinary course to have been received by a steward. Rex v. Hall, 1 M. C. C. 474.

Where, by the rules of certain unenrolled friendly societies, the members of one lodge were at liberty to pay their contributions to another lodge, if more convenient for them so to do;—Held, that in an indictment against the secretary of a lodge for embezzling monies received from a member of another lodge, the monies may be laid as the property of, and the prisoner may be alleged to be clerk and servant to, the trustees of his lodge. to whose account all monies received by him ought to be paid, although the trustees, in their turn, would, in this instance, have to account to the other lodge for the particular sum received on its be-The secretary of an unenrolled friendly society, who is paid a yearly salary out of its funds, is properly described in the indictment as clerk and servant to the trustees, and it would be incorrect to designate him as employed in the capacity of clerk The latter description and servant. only applies where the prisoner is employed on temporary occasions, and does not usually fill the situation of clerk or servant. Reg. v. Woolley, 4 Cox, C. C. 255—Patteson.

A member of two unenrolled benefit clubs, paid as secretary, and intrusted with the funds to deposit in the bank in the joint names of himself and the treasurer, dishonestly appropriating to himself the sums

intrusted to him, cannot be found guilty of larceny as a servant, or of embezzlement, or of larceny as a bailee. Reg. v. Marsh, 3 F. & F. 523—Keating.

A. was secretary to a benefit building society. It was no part of his duty, as prescribed by the rules, to receive money for the society; but, according to the course of business, the subscriptions were frequently received by him, and when mortgages were redeemed the money was paid to him as secretary, but for and upon receipts signed by the trustees. Having embezzled the redemption money upon a mortgage so paid to him, he was indicted under 7 & 8 Geo. 4, c. 29, s. 47: -Held, that there was evidence for the jury that he was employed by the trustees as their servant to receive money on their behalf. Reg. v. Hastie, 9 Cox, C. C. 264; L. & C. 269; 9 Jur., N. S. 235; 32 L. J., M. C. 63; 11 W. R. 293; 7 L. T., N. S. 695.

Two friendly societies appointed a committee, of which the defendant was a member, to conduct an excursion; the committee employed him and several others to sell tick-It was his duty to pay over the money so received, which was to belong to the two societies, to a person appointed by the committee, but he received no remuneration for his services:—Held, that he was a joint owner of the money, and not a clerk or servant within 24 & 25 Vict. c. 96, s. 68, liable to be indicted for embezzlement. Reg. v.Bren, L. & C. 346; 9 Cox, C. C. 398; 33 L. J., M. C. 59; 12 W. R. 107; 9 L. T., N. S. 452.

The secretary of an unenrolled friendly society, whose duty it is to receive the weekly contributions of the members, to enter them in a book, and hand over the amount to the treasurer, who in his turn pays it into a bank in the names of the trustees of the society, may be prop-

erly described as the servant of the trustees in an indictment charging him with embezzling sums so received, and he cannot be described as the servant of the treasurer. Reg. v. Woolley, 4 Cox, C. C. 251—Platt.

A. who was convicted of embezzlement, was secretary of a money His duties were cognate to that of receiving money, although, the receipt of money was not expressly named as one of them in the rules, which were in writing. He was directed by the club to sue upon a joint promissory note, their property, or get better security, and the note was handed to him by the treasurer, not a member of the club, who desired that his name should not be used in legal proceedings. The note was payable to the treasurer's order, and A. endorsed the treasurer's name on the note, and employed an attorney, who issued a writ at the suit of A. In consequence of the action money was paid to him by one of the makers of the note, the receipt of which he denied, and fraudulently withheld the money from the club, and appropriated it:—Held, that he was rightly convicted. Reg. v. Tongue, Bell, C. C. 289; 8 Cox, C. C. 386; 30 L. J., M. C. 49; 9 W. R. 59; 3 L. T., N. S. 415.

A member of and secretary to a benefit society, deriving a percentage from the funds of the society, received in the course of his duty certain money from the bers of the society, which it was his duty to pay into an account in the savings bank kept in the names of certain other members of the society. Instead of paying the money into the bank he appropriated it:—Held, that he could not be convicted of embezzling the money upon an indictment charging him to be the servant of "A. B. and others," and laying the money to be that of "A. B. and others,"

A. B. being an ordinary member of the society. *Reg.* v. *Taffs*, 4 Cox, C. C. 169—Maule.

But where the secretary of a friendly society, of which A. B. and others were the trustees, was charged with the embezzlement of money belonging to the society; and in the indictment the property was laid as "of A. B. and others," without alleging that they were the trustees of the society:—Held, that the indictment might be amended by the addition of the words "trustees of &c." Reg. v. Marks, 10 Cox, C. 367—Chambers, C. S.

A member of a friendly society was employed to receive the weekly payments made by the members. He gave correct receipts to the members, but omitted to enter in the contribution and cash books a large number of the sums so received. On being called upon for an explanation, he admitted that he had received the sums so omitted:—Held, that he was guilty of embezzlement. Reg. v. Proud, L. &. C. 97; 9 Cox, C. C. 22; 31 L. J., M. C. 71; 8 Jur., N. S. 142.

Upon the trial, these books were tendered generally in evidence, and received, although it was objected that the evidence ought to be confined to the entries forming the subject of the indictment:—Held, that they were rightly admitted. *Ib*. A secretary of a friendly society

A secretary of a friendly society under 18 & 19 Vict. c. 63, in which no trustee had ever been appointed, was convicted on an indictment for embezzlement, prior to the coming into operation of the above enactment, and the indictment described him as the servant of the treasurer, and also as the servant of C. (a member) and others:—Held, that the conviction was wrong. Reg. v. Diprose, 19 L. T., N. S. 292; 17 W. R. 180; 11 Cox, C. C. 185; S. P., Reg. v. Blackburn, 11 Cox, C. C. 157—C. C. R.

A treasurer of a friendly society

(duly enrolled and the rules of which had been certified by the barrister appointed in that behalf), whose duty it was to receive the monies paid into the society, and hold them to the order of the secretary, counter-signed by the chairman, or a trustee, and to account whenever called upon, to which office no salary was attached, is not a clerk or a servant liable to be indicted for embezzlement under 24 & 25 Vict. c. 96, s. 68. Reg. v. Tyrie, 38 L.J., M. C. 58; 17 W. R. 334; 1 L. R., C. C. 177; 19 L. T., N. S. 657; 11 Cox, C. C. 241.

The trustees of a benefit building society borrowed money for the purposes of their society on their individual responsibility (there being no rule of the society authorizing them to borrow money). The money on one occasion was received by the secretary, and embezzled by him :-Held, that he might be charged in an indictment for embezzlement as the servant of W. and others, W. being one of the trustees and a member of the society. Reg. v. Redford, 21 L. T., N. S. 508; 17 W. R. 262—C. C. R.

When Society is illegally or irregularly constituted.]—Where a society, in consequence of administering to its members an unlawful oath, is an unlawful combination and confederacy under 37 Geo. 3, c. 123; 39 Geo. 3, c. 79; 52 Geo. 3, c. 104; and 57 Geo. 3, c. 19; a person charged with embezzlement, as clerk and servant to such society, cannot be convicted. Reg. v. Hunt, 8 C. & P. 642—Mirehouse, C. S.

It is embezzlement in the clerk of a friendly society fraudulently to withhold the rents of a house collected in the course of his duty as clerk; and he may be laid to be the clerk or servant of the trustees to whom the house was conveyed, if appointed either by them or the society. It is no defence that the business of the society has not been conducted according to the statute. Reg. v. Miller, 2 M. C. C. 249.

When Society or Partnership is illegally constituted. —An officer of a friendly society, some of whose rules were in restraint of trade, embezzled its money:—Held, that rules in restraint of trade are not criminal, although they may be void as being against public policy, and that a society having such rules is entitled to the protection of the criminal law for its funds, and, consequently, that the officer might legally be convicted of embezzlement. v. Stainer, 1 L. R., C. C. 230; 39 L. J., M. C. 54; 18 W. R. 439; 21 L. T., N. S. 758. See 32 & 33 Vict. c. 61.

By Persons in the Queen's Service or by the Police.]-By 24 & 25 Vict. c. 96, s. 70, "whosoever, be-"ing employed in the public service "of her Majesty, or being a consta-"ble or other person employed in "the police of any county, city, bo-"rough, district or place whatsoev-"er, and intrusted by virtue of such "employment with the receipt, cus-"tody, management or control of "any chattel, money or valuable "security, shall embezzle any chat-"tel, money or valuable security "which shall be intrusted to or re-"ceived or taken into possession by "him by virtue of his employment, "or any part thereof, or in any "manner fraudulently apply or dis-"pose of the same or any part "thereof to his own use or benefit, "or for any purpose whatsoever "except for the public service, shall "be deemed to have feloniously stol-"en the same from her Majesty, "and being convicted thereof shall "be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "fourteen years and not less than "five years (27 & 28 Vict. c. 47),

"not exceeding two years, with or without hard labour;

"And every offender against this "section may be dealt with, indict"ed, tried and punished either in "the county or place in which he "shall be apprehended or be in "custody, or in which he shall have "committed the offence;

"And in every case of larceny, " embezzlement or fraudulent appli-"cation or disposition of any chat-"tel, money or valuable security in "this and the last preceding section "mentioned, it shall be lawful in "the warrant of commitment by the "justice of the peace before whom "the offender shall be charged, and "in the indictment to be preferred "against such offender, to lay the "property of any such chattel, mon-"ev or valuable security in her Ma-"jesty." (Former provisions, 2 & 3 Will. 4, c. 4, ss. 1, 4, 5, and 22 & 23 Vict. c. 32, s. 25.)

It was proved that a post-office letter-carrier was in the daily habit of calling at the lodge of an infirmary, and there receiving letters, with a penny on each, to prepay the postage of them; and that he took them, with the penny, to the postoffice; and that, during his illness, a person who had performed his duties did the like. There was no evidence of any appointment:— Held, in an indictment under 2 & . 3 Will. 4, c. 4, s. 1, for embezzling some of the pence thus received, that this was evidence to go to the jury, that the pence were received by the prisoner by virtue of his employment as a letter-carrier. v. Townsend, Car. & M. 178—Coleridge.

An indictment for embezzlement of money received by a clerk, whilst such, was good under 2 & 3 Will. 4, c. 4, without alleging the embezzling to have taken place whilst he was clerk. Rev v. Lovell, 2 M. & Rob. 236—Coleridge.

"five years (27 & 28 Vict. c. 47), Upon the trial of an indictment or to be imprisoned for any term under 2 & 3 Will. 4, c. 4 s. 1, Digitized by Microsoft®

charging that A., being intrusted by virtue of his employment in the public service with the receipt and custody of certain money, the property of the crown, did fraudulently and feloniously apply the same to his own use, it was proved that A., being a receiver of taxes, had kept in his own hands a balance very much exceeding that which he was allowed to retain; and upon being asked whether he was prepared to pay over that balance or any part of it, he replied that he was not. He was then reminded that there was a balance of excise duties alone of about 300l, standing against him from the previous Monday, which was a receipt day at a particular place in his district. He then produced 255l., and said that was all he had in the world; and that the rest he had spent in an unfortunate speculation:—Held, that there was evidence of the receipt of a particular sum of 300l. by virtue of his employment, and of a misapplication by him of a part of it; and that, therefore, the conviction was right, even if evidence of a general deficiency on a balance of accounts would not alone have supported such an indictment. Reg. v. Moah, 7 Cox, C. C. 60; 2 Jur., N. S. 213; 25 L. J., M. C. 66; Dears. C. C. 626.

On an indictment for embezzlement against a letter-carrier, as a person employed in the public service of her Majesty, it is not necessary to prove his appointment as a letter-carrier, but evidence of his having acted as such is sufficient. Rex v. Borrett, 6 C. & P. 124—Littledale.

If the wife of a party to whom a letter is directed pays the postage of the letter, she is entitled to demand an overcharge made for it; and a refusal on the part of the letter-carrier to account for it to her is evidence of an embezzlement by him. Ib.

By Officers of the Bank of England or Ireland.]—By 24 & 25 Viet. c. 96, s. 73, "whosoever, being an "officer or servant of the governor "and company of the Bank of Eng-"land or of the Bank of Ireland, "and being intrusted with any bond, "deed, note, bill, dividend warrant, "or warrant for payment of any "annuity or interest, or money, or "with any security, money or other "effects of or belonging to the said "governor and company, or having "any bond, deed, note, bill, divi-"dend warrant, or warrant for pay-"ment of any annuity or interest, " or money, or any security, money "or other effects of any other per-"son, body politic or corporate, "lodged or deposited with the said "governor and company, or with "him as an officer or servant of the " said governor and company, shall "secrete, embezzle, or run away "with any such bond, deed, note, "bill, dividend or other warrant, "security, money, or other effects "as aforesaid, or any part thereof, "shall be guilty of felony, and be-"ing convicted thereof shall be lia-" ble, at the discretion of the court, "to be kept in penal servitude for "life or for any term not less than "five years (27 & 28 Vict. c. 47), " or to be imprisoned for any term "not exceeding two years, with or without hard labour, and with or "without solitary confinement."

# 2. Amounting to Larceny or Embezzlement.

By 24 & 25 Vict. c. 96, s. 72, "if upon the trial of any person "indicted for embezzlement, or "fraudulent application or disposition as aforesaid, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not

"guilty of embezzlement, or fraud-"ulent application or disposition, "but is guilty of simple larceny, or " of larceny as a clerk, servant, or "person employed for the purpose " or in the capacity of a clerk or "servant, or as a person employed "in the public service, or in the po-"lice, as the case may be; and "thereupon such person shall be "liable to be punished in the same "manner as if he had been con-"victed upon an indictment for "such larceny;

"And if upon the trial of any " person indicted for larceny it shall "be proved that he took the prop-"erty in question in any such man-"ner as to amount in law to em-"bezzlement, or fraudulent applica-"tion or disposition as aforesaid, he "shall not by reason thereof be "entitled to be acquitted, but the "jury shall be at liberty to return "as their verdict that such person "is not guilty of larceny, but is "guilty of embezzlement, or fraud-"ulent application or disposition, as "the case may be, and thereupon "such person shall be liable to be "punished in the same manner as "if he had been convicted upon an "indictment for such embezzlement, "fraudulent application or disposi-"tion; and no person so tried for "embezzlement, fraudulent applica-"tion or disposition, or larceny as "aforesaid, shall be liable to be " afterwards prosecuted for larceny, "fraudulent application or disposi-"tion, or embezzlement, upon the "same facts." (Former provision, 14 & 15 Vict. c. 100, s. 13.)

A. was indicted for larceny as a servant. At the trial there was evidence of embezzlement, but none of larceny: -- Held, that although by 14 & 15 Vict. c. 100, s. 13, a person indicted for larceny might be convicted of embezzlement, yet he could not be convicted of larceny if there was only evidence of Reg. v. Gorbutt, embezzlement.

S. 371; 26 L. J., M. C. 47; 7 Cox, C. C. 221.

On a charge for receiving goods knowing them to have been feloniously stolen and carried away, the prisoner may be convicted if the goods have been embezzled, and he received them knowing them to have been embezzled, for by 7 & 8 Geo. 4, c. 29, s. 47, embezzlement is deemed stealing. Reg. v. Frampton, Dears. & B. C. C. 585; 4 Jur., N. S. 566; 27 L. J., M. C. 229.

The prisoner, who was clerk to the prosecutor, was indicted for embezzling certain monies belonging to his master. The evidence shewed that the prisoner had received at different times several sums of money from the prosecutor, a dealer in skins, for the purpose of purchasing skins. The prisoner obtained the skins on credit, and applied the money to his own use, but debited prosecutor in his day-book with several sums of money as having been paid for the skins. The jury found the prisoner not guilty of embezzlement, but guilty of larceny:—Held, that the conviction was wrong. Reg. v. Goodenough, Dears. C. C. 210; 6 Cox, C. C. 206.

A. was indicted for embezzlement as being a clerk and a servant of B., C. and D. A first count laid the offence, to wit, on the 18th of August, 1861. A second count laid a second act of embezzlement within six months, to wit, on the 1st of September. A third count laid a third act of embezzlement also within six months, under the same videlicet. A. was a member of. and secretary to, a properly certified friendly society, of which B., C. and D. were the trustees, and had, from time to time, received, though not in his capacity of secretary, funds belonging to the society, some part of which he had appropriated:—Held, that A. was properly convicted of embezzlement as the clerk and servant of B., C. and Dears. & B. C. C. 166; 3 Jur., N. D., and that the evidence of the

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acts of embezzlement needed not to l be confined to the days stated under the videlicets. Reg. v. Proud, 10 W. R. 62; 5 L. T., N. S. 331; L. & C. 97; 31 L. J., M. C. 71; 9 Cox, C. C. 22.

#### 3. Indictment.

Form. ]—By 24 & 25 Vict. c. 96, s. 71, "for preventing difficulties in "the prosecution of offenders in any "case of embezzlement, fraudulent "application or disposition, it shall " be lawful to charge in the indict-"ment and proceed against the of-"fender for any number of distinct " acts of embezzlement, or of fraud-"ulent application or disposition, "not exceeding three, which may "have been committed by him "against her Majesty or against "the same master or employer, "within the space of six months "from the first to the last of such

"And in every such indictment "where the offence shall relate to " any money or any valuable secu-"rity it shall be sufficient to allege "the embezzlement, or fraudulent "application or disposition, to be of "money, without specifying any "particular coin or valuable secu-"rity;

"And such allegation, so far as "regards the description of the " property, shall be sustained if the "offender shall be proved to have " embezzled or fraudulently applied " or disposed of any amount, al-"though the particular species of " coin or valuable security of which " such amount was composed shall "not be proved;

"Or if he shall be proved to have " embezzled or fraudulently applied " or disposed of any piece of coin or " any valuable security, or any por-"tion of the value thereof, although "such piece of coin or valuable se-" curity may have been delivered to " him in order that some part of the "value thereof should be returned

" or to some other person, and such "part shall have been returned ac-"cordingly. (Former provision, 7 & 8 Geo. 4, c. 29, s. 48.)

An indictment, which charges in one count that within six calendar months the prisoner received three sums, laying a day to the receipt of each, and that, "on the several days aforesaid," he embezzled these sums, is bad, because it does not shew that the sums were embezzled within six months of each other; and this objection ought to be taken on demurrer. Reg. v. Purchase, Car. & M. 617—Patteson.

An indictment which contains three charges of embezzlement should not only aver that the monies which are the subject of the charges were received within six months, but should also aver that they were embezzled within six months. Reg. v. Noake, 2 C. & K. 620—Cresswell.

A count for embezzling bank notes upon the statute may be joined with a count for larceny. Rex v. Johnson, 3 M. & S. 539.

Where, in an indictment for embezzlement, there is a second count charging another act of embezzlement within six months from the first, under 7 & 8 Geo. 4, c. 29, s. 48, but alleging the money to be the property of a different person from that mentioned in the first count, the words connecting the second count with the first may be rejected as surplusage, and the secoud count dealt with as an independent count. Reg. v. Woolley, 4 Cox, C. C. 251—Platt.

A prisoner was indicted in the first count for embezzlement, and in the second for larceny, as a bailee. After plea pleaded and the jury was charged, and in the course of the trial, it was objected for the prisoner that the indictment was bad for misjoinder of counts. court overruled the objection, and directed the prosecutor to elect upon which count he would proceed, "to the party delivering the same, and the prosecutor having elected to proceed upon the second count, the prisoner was found guilty thereon:—Held, that the conviction was right. Reg. v. Holman, 9 Cox, C. C. 201; L. & C. 177; 33 L. J., M. C. 153; 12 W. R. 764; 10 L. T., N. S. 464.

Where an indictment for embezzlement could not be supported because the offence was not an embezzlement but a larceny, and the larceny count stated the larceny to have been committed "in manner and form aforesaid":—Held, that the prisoner could not be convicted. Rex v. Murray, 5 C. & P. 145; 1 M. C. C. 276.

In an indictment for embezzling money, it is not necessary to state from whom the money so embezzled was received. Rew v. Beacall, 1 C. & P. 313, 454—Park.

The halves of country banknotes, sent in a letter, are goods and chattels; and a person who embezzles them is indictable for such embezzlement. Rex v. Mead, 4 C. & P. 535—Bosanquet.

If an indictment charges the prisoner with having embezzled "certain bills, commonly called Exchequer bills," and it appears that the person who signed them on the part of government was not legally authorized so to do, the indictment is bad; for they are not the things which they are averred to be. Rew v. Aslett, 2 Leach, C. C. 954, 958; 1 N. R. 1; R. & R. C. C. 67.

An indictment for embezzling need not have specified the exact sum embezzled. Rex v. Carson, R. & R. C. C. 303; S. P., Rex v. Grove, 1 M. C. C. 447.

Indictment.]—An indictment for embezzling money under 24 & 25 Viet. c. 96, s. 68, is not proved by shewing merely that the prisoner embezzled a cheque, without evidence that he has converted the cheque into money. Reg. v. Keena, 17 L. T., N. S. 515; 16 W. R. 375;

1 L. R., C: C. 113; 37 L. J., M. C. 43; 11 Cox, C. C. 123.

Venue.]—An indictment for embezzlement may be either laid in the county in which the money was received, or in the county where the prisoner disowned having received the money. Rew v. Hobson, R. & R. C. C. 56; 1 East, P. C. Add. xxiv; 2 Leach, C. C. 975.

If a servant receives money for his master in the county of A., and, being called upon to account for it in the county of B., there denies the receipt of it, he may be indicted for the embezzlement in the latter county. Rex v. Taylor, 3 B. & P. 596.

A prisoner, who was employed as a travelling salesman by a tradesman living at Nottingham, received two sums of money for his master in the county of Derbyshire, and, having appropriated them to his own use, neglected to return and account to his master for the money, as it was his duty to do; and having been, about two months after the receipt of the money, met by his master in Nottingham, and on being asked by him respecting the two sums of money, said he was sorry for what he had donethat he had spent the money:— Held, that there was evidence to go to the jury of an embezzlement in Nottingham, and that the prisoner was rightly tried there. v. Murdock, 2 Den. C. C. 298; 16 Jur. 19; 21 L. J., M. C. 22; 5 Cox, C. C. 360.

# 4. Particulars of Charges.

If a prisoner does not know the specific acts of embezzlement intended to be charged against him, he should apply to the prosecutor for a particular of the charges; and if it is refused, the judge will, on motion supported by proper affidavits, grant an order for such particular to be given, and postpone

the trial, if necessary. Such particular ought at least to state the persons from whom money is alleged to have been received. Rex v. Hodgson, 3 C. & P. 422—Vaughan; S. P., Rex v. Bootyman, 5 C. & P. 300—Littledale.

But the court of Queen's Bench has no jurisdiction to make an order upon a prosecutor to deliver the particulars. The application should be made to the judge at the assizes. Reg. v. Haslam, 1 Jur., N. S. 1139—B. C.—Crompton.

#### 5. Evidence.

It was the duty of a banking clerk to receive money, and to pay it either into a box or a till, of each of which he kept the key, and to make entries of his receipts in a book; the balance of each evening being the first item with which he debited himself in the book the next morning. On the morning of the day in question, he had thus debited himself with 1,762l.; and on being called on in the evening by his employer to produce his money, he threw himself on his employer's mercy, and said he was about 900l. short. Upon an indictment for embezzling:—Held, that this was evidence upon which the jury might convict, although no evidence was given of the persons from whom the money was received, or of the coin of which it consisted. Rex v. Grove, 7 C. & P. 635; 1 M. C. C. 447.

It is not enough to prove that a clerk has received a sum of money and not entered it in his book, unless there is also evidence that he has denied the receipt of it, or the like. Rex v. Jones, 7 C. & P. 833—Bolland.

A., a servant of B., was sent to receive rent due to B.; A. received it, and immediately went off with it to Ireland:—Held, that A.'s thus leaving her place and going off to Ireland, was evidence from which the jury might infer that A. in-

tended to embezzle the money. Rex v. Williams, 7 C. & P. 338—Coleridge.

If a person receives money as steward of another, proof of that circumstance is sufficient evidence of his being a steward, to support an indictment for embezzling such money. Rex v. Beacall, 1 C. & P. 312; and Rex v. Wellings, 1 C. & P. 454, 457—Park.

In a portmanteau not proved to belong to a prisoner on trial was found a paper folded like a letter, and containing in the inside what purported to be an inventory of goods pawned at different times. The inventory was not in his handwriting; but on the outside of the paper his name, and the word private, both in his handwriting, were indorsed:—Held, that the contents of the paper were not admissible against him. Reg. v. Hare, 3 Cox, C. C. 247.

A., a brewer, sent his drayman B. out with porter, with authority to sell it at fixed prices only. B. sold some of it to C., at an under price, and did not receive the money at the time; A. heard of this, and, unknown to B., told C. to pay B. the amount, which C. did, and B., when asked for it by A., denied the receipt of the money:—Held, to be sufficient evidence of embezzlement. Reg. v. Aston, 2 C. & K. 413—Patteson.

A person indicted as servant to guardians of the poor of a parish:

—Held, that the admission by him contained in the condition of his bond for the performance of his duties as treasurer, coupled with an act of parliament specifying those duties, was sufficient evidence of the nature of his appointment, viz. that he was to receive money for the guardians, and account to them for his receipts. Reg. v. Welch, 1 Den. C. C. 199; 2 C. & K. 296.

leaving her place and going off to Ireland, was evidence from which the jury might infer that A. in which the nature of the

service is defined, on an indictment for embezzlement against the latter, parol evidence of the service is inadmissible, unless notice has been given to produce the agreement. Reg v. Clapton, 3 Cox, C. C. 126-Patteson.

O. was indicted for embezzlement, and for the purpose of proving his identity as the person receiving certain things from S. & Co. for the prosecutor, an entry in a book of S. & Co. was read in evidence. The account was kept in four columns, in the first of which were entered the dates; in the second the name of the person on whose behalf the money was received; in the third the signature of the person receiving; and in the fourth the amount of the particular payment made by S. & Co.:—Held, that the entry, as explained by the evidence, amounted to a receipt; and that even for the purpose of proving identity, the whole entry could not be read without a stamp, and that therefore the conviction was wrong. Reg. v. Overton, Dears. C. C. 308; 6 Čox, C. C. 277; 18 Jur. 134; 23 L. J., M. C. 29.

But by 17 & 18 Vict. c. 83, s. 27, "every instrument liable to stamp "duty shall be admitted in evi-"dence in any criminal proceeding, "although it may not have the "stamp required by law impressed "thereon, or affixed thereto."

An indictment charged the prisoner with having embezzled three sums of twenty-one pounds, the monies of his employers, he being a clerk or servant. Evidence was given of the embezzlement of these sums, and it was then proposed to give evidence of other sums not charged in the indictment, but which had also been embezzled, to shew that if it should be contended the sums charged in the indictment were subjects of a mistake in keeping the accounts, there being many other sums unaccounted for, admitting evidence of such sums would | assist the jury in determining what value was to be attached to the suggestion:—Held, that such evidence was admissible. Reg. v. Richardson, 8 Cox, C. C. 448; 2 F. & F. 343—Williams.

A clerk to a savings bank was convicted on an indictment charging him with embezzlement, the property being laid in A. to prove that A. was a trustee of the bank, he was called, and stated that since the commission of the offence he had been acting as a trustee, but that before that date he had attended only one meeting, having on that occasion been requested to do so lest there should be a deficiency of trustees; but he was also a manager of the bank, and it did not appear that any act was done by him at that meeting which he might not have done as a manager:—Held, that this was insufficient evidence of acting to support the inference of the legal appointment of A. as a trustee, and that the conviction was wrong. Reg. v. Essex, Dears. & B. C. C. 369; 4 Jur., N. S. 15; 7 Cox, C. C. 384.

XIV. EMBEZZLEMENT AND FRAUDS BY AGENTS, BANKERS, TRUSTEES AND OTHERS.

- 1. Agents and Bankers, 139.
- Trustees, 142.
- 3. Directors, Members and Officers of
- Companies, 143.
  4. Disclosure of Circumstances, 144.
  5. Jurisdiction of Quarter Sessions,
- By Traders—See BANKRUPTCY.
- 1. Agents and Bankers.

By Conversion of Monies or Securities.]-By 24 & 25 Vict c. 96, s. 75, "whosoever, having been in-"trusted, either solely or jointly " with any other person, as a bank-"er, merchant, broker, attorney or "other agent, with any money or " security for the payment of mon-"ey, with any direction in writing "to apply, pay or deliver such "money or security, or any part "thereof respectively, or the pro"ceeds or any part of the proceeds "of such security, for any purpose, "or to any person specified in such "direction, shall, in violation of good faith, and contrary to the "terms of such direction, in any"wise convert to his own use or benefit, or the use or benefit of any person other than the person "by whom he shall have been so "intrusted, such money, security or proceeds, or any part thereof respectively." (Former provision, 7 & 8 Geo. 4, c. 29, s. 49.)

By Selling, Negotiating or Pledging Securities. - "And whosoever, "having been intrusted, either sole-"ly or jointly with any other per-"son, as a banker, merchant, "broker, attorney or other agent, "with any chattel or valuable se-"curity, or any power of attorney "for the sale or transfer of any "share or interest in any public "stock or fund, whether of the "United Kingdom, or any part thereof, or of any foreign state, "or in any stock or fund of any "body corporate, company or so-"ciety, for safe custody or for any "special purpose, without any au-"thority to sell, negotiate, transfer "or pledge, shall, in violation of "good faith, and contrary to the "object or purpose for which such "chattel, security or power of at-"torney shall have been intrusted "to him, sell, negotiate, transfer, " pledge or in any mauner convert "to his own use or benefit of any "person other than the person by "whom he shall have been so in-"trusted, such chattel or security, " or the proceeds of the same, or "any part thereof, or the share or "interest in the stock or fund to "which such power of attorney "shall relate, or any part thereof, "shall be guilty of a misdemeanor, "and being convicted thereof shall |

"be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without alabour, and with or without solitary confinement." (Former provision, 7 & 8 Geo. 4, c. 29, ss. 49, 50, and 7 & 8 Geo. 4, c. 27 repealed 52 Geo. 3, c. 63.)

By Selling Property or Securities intrusted to their Care.]—By s. 76, "whosoever, being a banker, mer-"chant, broker, attorney or agent, "and being intrusted, either solely " or jointly with any other person, "with the property of any other "person for safe custody, shall, "with intent to defraud, sell, nego-"tiate, transfer, pledge, or in any "manner convert or appropriate "the same, or any part thereof, to " or for his own use or benefit, or "the use or benefit of any person "other than the person by whom " he was so intrusted, shall be guilty " of a misdemeanor." (Former provision, 20 & 21 Vict. c. 54, s. 2.)

Acting under Powers of Attorney.]—By s. 77, "whosoever, being "intrusted, either solely or jointly "with any other person, with any power of attorney for the sale or "transfer of any property, shall "fraudulently sell or transfer or otherwise convert the same, or any part thereof, to his own use or benefit, or the use or benefit of any person other than the person "by whom he was so intrusted, "shall be guilty of a misdemeanor." (Former provision, 20 & 21 Vict. c. 54, s. 3.)

Factors fraudulently obtaining Advances on Property of Principals.]
—By s. 78, "whosoever, being a factor or agent intrusted, either solely or jointly with any other person, for the purpose of sale or

"otherwise with the possession of "any goods, or of any document of "title to goods, shall, contrary to or "without the authority of his prin-"cipal in that behalf, for his own "use or benefit, or the use or ben-"efit of any person other than the "person by whom he was so in-"trusted, and in violation of good "faith, make any consignment, de-"posit, transfer or delivery of any "goods or document of title so in-"trusted to him as in this section "before mentioned, as and by way "of a pledge, lien or security for "any money or valuable security "borrowed or received by such fac-"tor or agent at or before the time "of making such consignment, de-"posit, transfer or delivery, or in-"tended to be thereafter borrowed "or received, or shall, contrary to " or without such authority, for his "own use or benefit, or the use or "benefit of any person other thau "the person by whom he was so in-"trusted, and in violation of good "faith, accept any advance of any "money or valuable security on the "faith of any contract or agreement "to consign, deposit, transfer or de-"liver any such goods or document "of title, shall be guilty of a mis-"demeanor, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to any of the " punishments which the court may "award as hereinbefore last men-"tioned";

"And every clerk or other person "who shall knowingly and wilfully "act and assist in making any such "consignment, deposit, transfer or "delivery, or in accepting or pro-"curing such advance as aforesaid, "shall be guilty of a misdemeanor, "and being convicted thereof, shall "be liable, at the discretion of the "court, to any of the same punish-"ments: provided, that no such "factor or agent shall be liable to "any prosecution for consigning, "depositing, transferring or deliver-"ing any such goods or documents & P. 46—Tenterden.

" of title, in case the same shall not "be made a security for or subject "to the payment of any greater sum "of money than the amount which "at the time of such consignment, "deposit, transfer or delivery was "justly due and owing to such agent "from his principal, together with "the amount of any bill of exchange "drawn by or on account of such "principal, and accepted by such "factor or agent." (Former provision, 5 &6 Vict. c. 39, s 6.)

The 52 Geo. 3, c. 63, applied only to persons to whom securities by agents were intrusted in the exercise of their function or business. Rex v. Prince, 2 C. & P. 517—Ab-

bott.

Where a party established a savings bank, consisting of 130 members, each of whom paid a weekly subscription of 2s. 1d., the odd penny being paid to him for the trouble of managing the affairs of the bank, the funds of which were to be disposed of once a week by a lottery, consisting of 129 blanks, and one prize amounting to 13l. which was to go to the holder of the fortunate ticket; and the defendant having absconded, after receiving from one of the subscribers deposits to the amount of 10l. 8s. without receiving any benefit therefrom:—Held, that he was not indictable under the 52 Geo. 3, c.63, for embezzling the money as an agent, or as a person having the possession of money for safe custody. Rex v. Mason, D. & R. N. P. C. 22—Park.

A. placed valuable securities in the hands of B., with a written direction to invest the proceeds in the funds, "in case of any unexpected accident happening to A." No accident did happen to A., and the proceeds were by B. converted to his own use:—Held, that B. was not indictable under 52 Geo. 3, c. 63 (repealed); and it seemed that he would not be so under 7 & 8 Geo. 4, c. 29, s. 49. Rex v. White, 4 C.

An allegation in an indictment, that A. placed valuable securities in the hands of B., "with an order in writing, to invest the proceeds in the government funds," is not supported by proof of an order in writing, directing B. to invest the proceeds in the government funds, in case of any unexpected accident

happening to A. Ib.

If any chattel or valuable security is intrusted to any broker or agent originally for the purpose of sale, but the authority to sell is afterwards countermanded, and the broker or agent, notwithstanding that countermand, sells the goods in violation of the orders of his principal, such broker or agent might be convicted of misdemeanor, under 7 & 8 Geo. 4, c. 29, s. 49. Reg. v. Gomm,

3 Cox, C. C. 64—Maule.
An indictment on 7 & 8 Geo. 4, c. 29, s. 49, against a broker for embezzlement of a security for money, must have alleged a written direction to him as to the application of the proceeds. Reg. v. Golde, 2 M. & Rob. 425—Denman.

#### 2. Trustees.

By 24 & 25 Vict. c. 96, s. 80, "whosoever, being a trustee of any "property for the use or benefit, "either wholly or partially, of some " other person, or for any public or "charitable purpose, shall, with in-"tent to defraud, convert or appro-" priate the same or any part there-" of to or for his own use or benefit, "or the use or benefit of any per-"son other than such person as "aforesaid, or for any purpose oth-"er than such public or charitable " purpose as aforesaid, or otherwise "dispose of or destroy such prop-"erty or any part thereof, shall "be guilty of a misdemeanor: "provided, that no proceeding or "prosecution for any offence in-"cluded in this section shall be "commenced without the sanction "of the Attorney-General, or, in "case that office be vacant, of the "Solicitor-General: provided also, "that where any civil proceeding "shall have been taken against any "person to whom the provisions of "this section may apply, no person "who shall have taken such civil "proceeding shall commence any "prosecution under this section "without the sanction of the court "or judge before whom such civil "proceeding shall have been had or "shall be pending." (Former provision, 20 & 21 Vict. c. 54 ss. 1 and 13.)

By s. 1, "the term 'trustee' shall "mean a trustee on some express "trust created by some deed, will. " or instrument in writing, and shall "include the heir, or personal repre-"sentative of any such trustee, and "any other person upon or to whom "the duty of such trust shall have "devolved or come, and also an ex-"ecutor and administrator, and an "official manager, assignee, liquid-"ator or other like officer, acting "under any present or future act "relating to joint stock companies, "bankruptcy or insolvency." (Former provision, 20 & 21 Vict. c. 54, s. 17.)

A person, who was trustee, treasurer and secretary of a savings bank, was indicted for misappropriation as a trustee. As secretary, he received the money deposited, which, by the rules of the savings bank, it was his duty to hand over to the treasurer, who was required by the Savings Bank Acts to pay it over, when demanded, to the trustees, whose duty as defined by the rules, was to vest it in the public funds in the names of the Commissioners for the Reduction of the National Debt. He falsified his accounts, and appropriated to his own purposes part of the money so deposited with him as secretary, with intent to defraud:— Held, first, that he was a trustee for the benefit of other persons. v. Fletcher, L. & C., C. C. 180: 32

L. J., M. C. 206; 9 Cox, C. C. 189; 8 Jur., N. S. 649; 10 W. R. 753; 6 L. T., N. S. 545.

Held, secondly, that the rules of the savings bank were an instru-

ment in writing. 1b.

Held, thirdly, that there was an express trust created by the rules, although they were made before the appointment of the trustee and the existence of the trust fund.

A trustee of a friendly society (a lodge of Odd Fellows), was appointed, by resolution of the society, to receive money from the treasurer and carry it to the bank. He received the money, but instead of taking it to the bank, he applied it to his own purposes. He was indicted as a bailee of the monies of the treasurer R. C., feloniously converting the money to his own use; and also for a common law larceny of the money of R. C. The 18 & 19 Vict. c. 63, s. 18, vests the property of such societies in the trustees, and directs the property to be laid in the names of the trustees in indictments: -Held, that the prisoner could not be convicted of feloniously converting or stealing the monies of R. C. as charged in the indictment. Reg. v. Loose, 8 Cox, C. C. 302; 1 Bell, C. C. 259; 29 L. J., M. C. 132; 2 L. T., N. S. 254.

The court of Chancery sanctioned criminal proceedings upon an affidavit, stating that a trustee had paid 1,409l. into his private bankers, had drawn out the whole, with the exception of 28l., and had paid a private debt of 150l. out of the trust Wadham v. Rigg, 1 Drew. funds.

& Sm. 216.

# 3. Directors, Members, and Officers of Companies.

Fraudulently Appropriating Property. - By 24 & 25 Vict. c. 96, s. 81, "whosoever, being a director, mem-"ber or public officer of any body "corporate or public company, shall "fraudulently take or apply for his | " member, shareholder or creditor

" own use or benefit, or for any use "or purposes other than the use or "purposes of such body corporate "or public company, any of the "property of such body corporate " or public company, shall be guilty " of a misdemeanor.

Keeping Fraudulent Accounts.]— By s. 82, "whosoever, being a di-"rector, public officer or manager "of any body corporate or public "company, shall, as such, receive "or possess himself of any of the "property of such body corporate " or public company otherwise than "in payment of a just debt or de-"mand, and shall, with intent to " defraud, omit to make or to cause "or direct to be made a full and "true entry thereof in the books " and accounts of such body corpor-"ate or public company, shall be "guilty of a misdemeanor."

Destroying, Altering, Mutilating or Falsifying Books. ]—By. s. 83, "whosoever being a director, man-"ager, public officer or member of "any body corporate or public com-"pany, shall, with intent to defraud, "destroy, alter, mutilate or falsify "any book, paper, writing or valu-"able security belonging to the "body corporate or public company, " or make or concur in the making " of any false entry, or omit or con-"cur in the omitting any material particular, in any book of account " or other document, shall be guilty " of a misdemeanor."

Publishing Fraudulent Statements.]-By s. 84, "whosoever, be-"ing a director, manager or public "officer of any body corporate or "public company, shall make, cir-"culate or publish, or concur in " making, circulating or publishing, "any written statement or account "which he shall know to be false in "any material particular, with in-"tent to deceive or defraud any

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"of any such body corporate or public company, or with intent to "induce any person to become a "shareholder or partner therein, or "to intrust or advance any property "to such body corporate or public "company, or to enter into any se" curity for the benefit thereof, shall "be guilty of a misdemeanor."

#### 4. Disclosure of Circumstances.

By 24 & 25 Vict. c. 96, s. 85, noth-"ing in any of the last ten preceding " sections of this act contained shall "enable or entitle any person to re-"fuse to make a full and complete "discovery by answer to any bill in "equity, or to answer any question "or interrogatory in any civil pro-"ceeding in any court, or upon the "hearing of any matter in bank-"ruptcy or insolvency; and no per-"son shall be liable to be convicted " of any of the misdemeanors in any " of the said sections mentioned by "any evidence whatever in respect " of any act done by him, if he shall "at any time previously to his being "charged with such offence have "first disclosed such act on oath, in "consequence of any compulsory "process of any court of law or "equity, in any action, suit or pro-"ceeding which shall have been "bonâ fide instituted by any party "aggrieved, or if he shall have first "disclosed the same in any com-"pulsory examination or deposition "before any court, upon the hearing " of any matter in bankruptcy or in-"solvency." (Former provision, 7 & 8 Geo. 4, c. 29, s. 52; 5 & 6 Vict. c. 39, s. 6, and 20 & 21 Viet. c. 54,

Semble, a disclosure of any illegal act to which the statute relates must to be rendered available as a protection, be made bona fide, and must not be a mere voluntary statement made for the express purpose of screening the person making it from the consequences of his acts. In re Strahan, Paul and Bates, 7 Cox, C. C. 85.

An agent intrusted with a bill of lading, without authority of his principals, and in violation of good faith, deposited it with bankers for his own benefit, as a security for ad-He was charged with this offence before a magistrate. depositions which were taken in support of the charge contained ample evidence to support it. Having become bankrupt, he was taken by his creditors and examined respecting the subject-matter of the charge before a commissioner in bankruptcy, and then made a statement in every respect in accordance with the evidence in the depositions. He was afterwards indicted on the same charge. On the trial, his examination in bankruptcy was offered by him as a defence, as showing that he had disclosed the act before a commissioner in bankruptcy previously to being indicted for the offence, and that therefore he was not liable to conviction, by virtue of 5 & 6 Vict. c. 39, s. 6. This evidence of disclosure was held to be admissible under not guilty. Reg. v. Skeen, Bell, C. C. 97; 5 Jur., N. S. 151; 28 L. J., M. C. 91; 8 Cox, C. C. 143; 7 W. R. 255.

The majority of a court was, however, of opinion, that as the agent only stated before the commissioner matter which had been previously known and previously proved before the magistrate, he had not made any disclosure within the meaning of the statute, and consequently was not entitled to protection. The minority held, that as the statement of the agent was obtained on a compulsory examination, instituted bona fide by the creditors for their own interest, it was a disclosure before a commissioner within the act, notwithstanding the previous publicity of the matter there inquired into. Ib.

5. Jurisdiction of Quarter Sessions. By 24 & 25 Vict. c. 96, s. 87, "no misdemeanor against any of "the last twelve preceding sections " of this act shall be prosecuted or "tried at any court of general or "quarter sessions of the peace."

Jurisdiction of Justices to hear and determine.]-By 31 & 32 Vict. c. 116, s. 2, all the provisions of 18 & 19 Vict. c. 126, "for the summary "convictions of defendants by jus-"tices, shall extend and be applic-"able to the offence of embezzle-"ment by clerks and servants, or "persons employed for the purpose "or in the capacity of clerks or "servants; and the said act shall be " read as if the offence of embezzle-"ment had been included therein."

## XV. False Pretences and CHEATS.

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#### 1. Statutes.

By 24 & 25 Vict. c. 96, s. 88, "whosoever shall by any false pre-"tence obtain from any other per- taining any chattel, money or valu-"son any chattel, money or valu- able security by false pretences, the

"able security, with intent to de-"fraud, shall be guilty of a misde-"meanor, and being convicted "thereof shall be liable, at the dis-" cretion of the court, to be kept in "penal servitude for the term of "three years, or to be imprisoned "for any term not exceeding two " years, with or without hard labour, "and with or without solitary con-"finement." (Previous enactment, 7 & 8 Geo. 4, c. 29, s. 53, repealed by 24 & 25 Vict. c. 95.)

"Provided, that if upon the trial " of any person indicted for such mis-"demeanor, it shall be proved that "he obtained the property in ques-"tion in any such manner as to " amount in law to larceny, he shall "not by reason thereof be entitled "to be acquitted of such misde-"meanor; and no person tried for "such misdemeanor shall be liable "to be afterwards prosecuted for "larceny upon the same facts."

7 & 8 Geo. 4, c. 29, wholly repealed 33 Hen. 8, c. 1; 52 Geo. 3, c. 64, and so much of 30 Geo. 2, c. 24, s. 1, as related to this subject.

Bank-notes were not money, goods, wares or merchandises, within 30 Geo. 2, c. 24, s. 1. Rex v. Hill, R. & R. C. C. 190. 8 Geo. 4, c. 29, s. 53, extended 30 Geo. 2, c. 24, to persons obtaining. by false pretences, any valuable security.

By 24 & 25 Vict. c. 96, s. 89, "whosoever shall by any false pre-"tence cause or procure any money "to be paid, or any chattel or val-"uable security to be delivered to "any other person for the use or "benefit or on account of the per-"son making such false pretence, " or of any other person, with in-"tent to defraud, shall be deemed "to have obtained such money, "chattel or valuable security with-" in the meaning of the last preced-"ing section."

To constitute the offence of ob-

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obtaining must be in accordance with the wish, or for the advantage, or for the purpose of effecting some object, of the party making the false pretence. Reg. v. Garrett. Dears. C. C. 232; 17 Jur. 1060; 23 L. J., M. C. 20; 2 C. L. R. 106; 6 Cox, C. C. 260.

By 22 & 23 Vict. c. 17, s. 1, "no "bill of indictment for obtaining "money or other property by false "pretences shall be found by any grand jury unless the prosecutor "has been bound by recognizance "to prosecute, or the person accused "has been committed or bound by "recognizance to answer an indict-"ment for such offence, or unless "the indictment is preferred by the "direction, or with the written con-" sent, of a judge or of the attorney-"general."

#### 2. What are.

### (a) General Principles.

A pretence that a person would do an act that he did not mean to do (as a pretence to pay for goods on delivery), was not a false pretence within 30 Geo. 2, c. 24, s. 1. Rex v. Goodhall, R & R. C. C. 461.

But pretending to have been intrusted by one to take his horses from Ireland to London, and to have been detained by contrary winds till all his money was expended, was within 30 Geo. 2, c. 24, s. 1. Rex v. Villeneuve, 2 East, P. C. 830.

It was a false pretence within 30 Geo. 2, c. 24, s. 1, where the prisoner obtained money from the keeper of a post office, by assuming to be the person mentioned in a money order, which he presented for payment, though he did not make any false declaration or assertion in order to obtain the money. Rex v. Story, R. & R. C. C. 81.

A prisoner was charged with obtaining a filly by the false pretence that he was a gentleman's servant, and had lived at Brecon, and had

It appeared that he bought the filly of the prosecutor for 11l., making him this statement, which was false, and also telling him that he would come down to the Cross Keys and pay him. The prosecutor stated that he parted with his filly because he expected the prisoner would come to the Cross Keys and pay him, and not because he believed that the prisoner was a gentleman's servant:—Held, that if the prosecutor did not part with his filly by reason of the false pretence charged, or any part of it, the prisoner must be acquitted. Rex v. Dale, 7 C. & P. 352—Coleridge.

A pretence to a parish officer, as an excuse for not working, that the party has not clothes, when he really has, although it induces the officer to give him clothes, was not obtaining goods by false pretences within 30 Geo. 2, c. 24, s. 1. Rex v. Wake-

ling, R. & R. C. C. 504.

The offence of obtaining money under false pretences, created by 30 Geo. 2, c. 24, s, 1, was complete only where the money was obtained. Pearson v. M' Gowran, cited 5 D. & R. 616; 3 B. & C. 700.

To have constituted an offence within 30 Geo. 2, c. 24, s. 1, money or goods must have been obtained by a false pretence with an intention to defraud; but the pretence might have related to a future transaction. Rex v. Young, 1 Leach, C. C. 505; 2 East, P. C. 82, 833; 3 T.

It is a false pretence if a carrier obtains the carriage-money by pretending to have delivered the goods and lost the bailee's receipt for them. Rev v. Airey, 2 East, P. C. 831; 2 East, 30; S. P., Rex v. Coleman, 2 East, P. C. 672.

Where an indictment charges a false pretence of an existing fact calculated to induce the confidence which led to the prosecutor's parting with his property, though mixed up with false pretences as to the bought twenty horses in Brecon fair. | prisoner's future conduct, it is sufficient. Reg. v. Bates, 3 Cox, C. C. 201 - Platt.

Where the false pretence is as to the status of the party at the time, or as to any collateral fact supposed to be then existing, it will equally support an indictment.

An indictment for obtaining money by false pretences cannot be sustained, if the prosecutor when he parted with his money knew the representation to be false. Reg. v.Mills, 7 Cox, C. C. 263; Dears. & B. C. C. 205; 26 L. J., M. C. 79.

A false pretence must be the false pretence of an existing fact, and if the person to whom it is made is defrauded by it, it makes no difference that he might have known that the pretence was false, or that it is not such a pretence as would be likely to defraud a person of ordinary caution. Reg. v. Woolley, 3 C. & K. 98; 1 Den. C. C. 559; T. & M. 279; 4 New Sess. Cas. 341; 14 Jur. 465; 19 L. J., M. C. 165; 4 Cox, C. C. 193.

Therefore, where A., the secretary of a lodge of odd fellows, told B., a member of the lodge, that he owed the society 13s. 9d., when in fact B. only owed 2s. 3d., and A., by this false pretence, obtained the money of B:-Held, that this was an obtaining of money by false pretences.

A fraudulent misrepresentation of an existing matter of fact, accompanied by an executory promise to do something at a future period, as that the prisoner had bought certain skins, and would sell them to the prosecutor, is a false pretence within the statute, although it appears that the promise, as well as such misrepresentation of fact, induced the prosecutor to part with the money. Reg. v. West, Dears. & B. C. C. 575; 4 Jur., N. S. 514; 27 L. J., M. C. 227; 8 Cox, C. C. 12.

Obtaining a gift of money by means of false statements, is obtaining money by false pretences. Reg. v. Jones, T. & M. 270; 4 New

Sess. Cas. 353; 1 Den. C. C. 551; 3 C. & K. 346; 14 Jur. 533; 19 L. J., M. C. 162; 4 Cox, C. C. 198.

A begging letter, making false representations as to the condition and character of the writer, by means of which money is obtained,

is a false pretence. Ib.

The crime of obtaining goods by false pretences is complete, although at the time when the prisoner made the pretence, and obtained the goods, he intended to pay for them when it should be in his power to do so. Reg. v. Naylor, 10 Cox, C. C. 151; 1 L. R., C. C. 4; 11 Jur., N. S. 910; 35 L. J., M. C. 61; 14 W. R. 58; 13 L. T., N. S. 381.

Where a prisoner, being employed at an hospital, wrote to the prosecutor, as manager, for a small quantity of linen, not saying it was for the hospital, and in point of fact he was not manager, and the goods were really ordered for himself, but not sent, on an indictment for an attempt to obtain them, the question left to the jury was, whether he ordered the goods as for and on behalf of the hospital or in his own name, there being no evidence of an intention to pay cash, but evidence of its absence. Reg. v. Franklin, 4 F. & F. 94—Willes.

If a party obtains money by a false pretence, knowing it to be false at the time, it is no answer to shew that the party from whom he obtained the money laid a plan to entrap him into the commission of the offence. Reg. v. Ady, 7 C. & P. 140 — Vaughan and Patteson.

A person who makes a false pretence of having a power to do something, whether the power is physical, moral or supernatural, for the purpose of obtaining money or goods, is indictable for false pretences. Reg. v. Giles, L. & C. 502; 10 Cox, C. C. 44; 11 Jur., N. S. 119; 34 L. J., M. C. 51; 13 W. R. **827**; 11 L. T., N. S. 643.

It is not necessary that the false pretence should be made in express words, if it can be inferred from all | the circumstances attending the ob-

taining of the property.

B. was indicted for having falsely pretended that he was Mr. H., who had eured Mrs. C. at the Oxford Infirmary, and thereby obtaining 5s. with intent to defraud G. P. made the pretence, and thereby induced the prosecutor to buy, at the expense of 5s., a bottle containing something which he said would cure the eye of the prosecutor's child. It was proved that B. was not Mr. H:—Held that this was a false pretence. Reg. v. Bloomfield, Car. & M. 537: 6 Jur. 224—Cresswell.

If a person at Oxford, who is not a member of the University, goes to a shop for the purpose of fraud, wearing a commoner's cap and gown, and obtains goods; this appearing in a cap and gown is a sufficient false pretence to satisfy the statute, although nothing passes in words. Rex v. Barnard, 7 C. & P. 784—Bolland.

A., by falsely representing that a house and some shops had been built upon certain land, obtained from the prosecutor an advance of A. deposited the lease of money. the land, signed an agreement to execute a mortgage and executed a bond as security for the money:— Held, that he was rightly convicted of obtaining money by false pretences. Reg. v. Burgon, Dears. & B. C. C. 11; 2 Jur., N. S. 596; 25 L. J., M. C. 105; 7 Cox, C. C. 131.

Although to constitute the statutable offence of obtaining money by means of false pretences, the pretence must be false at the time: Semble, it need not necessarily be of some alleged existing fact, eapable of being disproved by positive testimony, but may depend on the bona fide intention and willingness of the defendant at the time of entering into a contract to perform it,

Reg. v. Jones, 6 Cox, C. C. 467—

Crompton.

A false pretence as to an existing, essential fact will sustain an indictment for obtaining money by false pretences, although it is united with false promises, which alone would not have supported the conviction. Reg. v. Jennison, L. & C. 157; 9 Cox, C. C. 158; 8 Jur. N. S. 442; 31 L. J., M. C. 146; 10 W. R. 488; 6 L. T., N. S. 256.

The prosecutor lent 10*l*, to the prisoner on the false pretence that he was going to pay his rent, and if the prisoner had not told him that he was going to pay his rent, the prosecutor would not have lent the money:—Held, that this was not a false pretence of any existing fact, to warrant a conviction. Reg. v. Lee, 9 Cox, C. C. 304; L. & C. 309; 11 W. R. 761; 8 L. T., N. S. 437.

A. was indicted for obtaining goods by false pretences. He obtained the goods from the prosecutor by pretending that he wanted them for S., whom he represented as living at N., and being a person to whom he would trust 1,000l., and who went out twice a year to New Orleans to take goods to his The jury found that all these representations were false, and that the prosecutor, believing that A. was connected with S., and employed by him to obtain the goods, contracted with A. and not with the supposed S., and delivered the goods to A. for himself, and not for S.:— Held, that A. was rightly convicted. Reg. v. Archer, Dears. C. C. 449; 1 Jur., N. S. 479; 6 Cox, C. C. 515; 3 C. L. R. 623.

Money was obtained by the prisoner from an unmarried woman on the false representations that he was a single man, and that he would furnish a house with the money, and would then marry her: —Held, that the false representation of an existing fact (that he or to do some act at a future period. was not a single man) was sufficient

to support a conviction for false pretences, although the money was obtained by that representation, united with the promise to furnish a house and then marry her. Reg. v. Jennison, 9 Cox, C. C. 158; L. & C. 157; 31 L. J., M. C. 146.

An attorney, who had appeared for a person who was fined 2l. on a summary conviction, called on a person's wife and told her that he had been with another person, who was fined 2l. for a like offence to Mr. B. and Mr. L., and that he had prevailed upon Mr. B. and Mr. L. to take 11. instead of 21., and that if she would give him 11. he would go and do the same for her. She gave the attorney a sovereign, and afterwards paid him for his trouble. It was proved that the attorney never applied to either Mr. B. or Mr. L. respecting either of the fines, and that both were afterwards paid in full:—Held, that he was guilty of obtaining money by false pre-Rex v. Asterley, 7 C. & tences. P. 191—Park.

A. owned B. a debt, of which B. could not get payment. C., a servant of B., went to A.'s wife and obtained two sacks of malt from her, saying that B. had bought them of A. C. knew this to be false, but took the malt to B., his master, to enable him to pay himself the debt:—Held, that if C. did not intend to defraud A., but merely to put it into his master's power to compel A. to pay him a just debt, C. ought not to be convicted of obtaining the malt by false pretences. Rex v. Williams, 7 C. & P. 354—Coleridge.

A defendant was tried upon an indictment for obtaining money by false pretences, in which it was alleged that she had represented that she kept a shop, and that the prosecutrix might go and live with her till she got a situation. It was proved that the defendant did not keep a shop, and the prosecutrix

the money because the latter had said that she kept the shop, and that she, the prosecutrix, should have the money when she got home with her. The jury returned a special verdict, finding the defendant guilty of fraudulently obtaining the money, the prosecutrix parting with it under the belief that the defendant kept a shop, and that the prosecutrix should have it when she went home with her:—Held, that the defendant was properly convicted of obtaining money by false pretences. Reg. v. Fry, Dears. & B. C. C. 449; 4 Jur., N. S. 266; 27 L. J., M. C. 68; 7 Cox, C. C.

On a trial of an indictment which charged the prisoner with obtaining a horse of the prosecutor by falsely representing himself to be the servant of Hardman, of Stickley, the evidence was that the prisoner at first represented himself as a servant of Hardman, of Stickley Farm, but that afterwards, learning that the prosecutor had mistakingly supposed that he had said he was the servant of Harding, late of Benwell Lodge, he adopted that view, and virtually said that he was the servant of Harding, late of Benwell Lodge, and now of Stickley Farm. It was proved that the prosecutor parted with his horse in the belief that the prisoner was the servant of Harding:—Held, that the conviction could not be supported, as the real pretence that operated on the prosecutor's mind was not alleged in the indictment. Reg. v. Bulmer, L. & C. 476; 9 Cox, C. C. 492; 10 Jur., N. S. 684; 33 L. J., M. C. 171; 12 W. R. 887; 10 L. T., N. S. 580.

What amount to.]—A conviction for obtaining a chattel by false pretences is good, although the chattel is not in existence at the time the pretence is made, provided the subsequent delivery of the chattel is stated that she lent the defendant | directly connected with the false

pretence. Whether or not there is such a direct connexion is a question for a jury. Reg. v. Martin, 1 L. R., C. C. 56; 36 L. J., M. C. 20; 10 Cox, C. C. 383; 15 L. T., N. S. 54; 15 W. R. 358.

The prisoner, by falsely pretending to G. that he was agent to a steam laundry company, of which some of the leading men in B. were at the head, and that he was desired by the company (which, he subsequently admitted, was only himself) to procure a van, induced G. to make the van; but, before it was sent to the laundry premises, countermanded it. G. nevertheless delivered the van, which the prisoner returned to G., telling him that he ought not to have sent it after the countermand. G. said he should not know what to do with it, and that the prisoner must keep it, upon which he replied that, if he did, G. must put in some boards for the baskets of linen; to which G. assented, and the prisoner then drove away with the van. Upon indictment for obtaining the van by false pretences:—Held, that there was evidence to go to the jury.

Hewers and putters in a colliery had tokens differently marked, which they placed on the tubs of coal drawn up the pit, and which were then taken off and put into a box, and their wages calculated according to the number of tokens sent up by them. The putter fetched the empty tub to the hewer, and took it when full to the station to be drawn up to the bank; before the tub was filled he placed his token on it, to denote the sum he was entitled to for his labour in putting and removing the tub to the station, and the hewer put his token also to denote the amount he was entitled to for hewing the coal and filling the tub. A hewer removed the putter's token after the tub was brought to him and substituted one

tional token of his own for hewing and filling the tub. The tub was then drawn up, and the two tokens thrown into the box. The contents of the box were then taken away by the tokenman, and the accounts of the different workmen made up according to the number of tokens found with their initials on. that way the hewer obtained money for hewing and filling two tubs of coals instead of one only:—Held, that this amounted to an indictable false pretence. Reg. v. Hunter, 17 L. T., N. S. 321; 10 Cox, C. C. 642; 16 W. R. 342—C. C. R.

A postman falsely pretended that the sum of 2s. was payable on a post letter entrusted to him for delivery, whereas 1s. only was payable:—Held, that the offence was complete when he made the pretence, and therefore the absence of any evidence to show positively that he did not pay over the extra 1s. to the superior officer was quite immaterial to his guilt or innocence. Reg. v. Byrne, 10 Cox, C. C. 369.

A prisoner obtained a sum of money from the prosecutor by pretending that he carried on an extensive business as an auctioneer and a house agent, and that he wanted a clerk, and that the money was to be deposited as security for the prosecutor's honesty as such clerk. The jury found that the prisoner was not carrying on any such business at all:—Held, that this was an indictable false pretence. Reg. v. Crab, 18 L. T., N. S. 370; 16 W. R. 732; 11 Cox, C. C. 85—C. C. R.

the tub was filled he placed his token on it, to denote the sum he was entitled to for his labour in putting and removing the tub to the station, and the hewer put his token also to denote the amount he was entitled to for hewing the coal and filling the tub. A hewer removed the putter's token after the tub was brought to him and substituted one of his own, and then put an addi-

apply to W. for goods on the credit of her husband, and that he was willing to pay for them; and that she wanted them to furnish a house in his occupation. It was proved that on the 4th of August she called at W.'s shop, and on being served by U., selected certain goods, and, being asked for a deposit, said it was a cash transaction, that her husband would give a cheque as soon as the goods were delivered. The deed was proved, and it was also proved that the annuity covenanted to be paid by the husband was duly paid; that the house which she gave as her address, and which was found shut up after the goods had been sent to it, had been taken by her whilst in company with a man with whom she had been living as his wife from the middle of July till the end of August:—Held, that there was abundant evidence to support a conviction. Reg. v. Davis, 17 W. R. 127; 19 L. T., N. S. 325; 11 Cox, C. C. 181—C. C. R.

On an indictment for obtaining goods in a market by falsely pretending that a room had been taken at which to pay the market people for their goods, the jury found that the well-known practice was for buyers to engage a room at a public house, and that the prisoner conveyed to the minds of the market people that she had engaged such a room, and that they parted with their goods on such belief:—Held, there being no evidence that the prisoner knew of such a practice, and the case being consistent with a promise only on her part to engage such a room and pay for the goods there, a conviction could not Reg. v. Burrows, 20 be sustained. L. T., N. S. 499; 17 W. R. 682; 11 Cox, C. C. 258—C. C. R.

The prosecutor lent money to the prisoner at interest, on the security of a bill of sale on furniture, a promissory note of the prisoner and another person, and a declaration from the boy by the like false pre-

made by the prisoner that the furniture was unencumbered. The declaration was untrue at the time it was handed to the prosecutor, the prisoner having a few hours before given a bill of sale for the furniture to another person, but not to its full value:—Held, that there was evidence in support of a charge of obtaining money by false pretences. Reg. v. Meakin, 11 Cox, C. C. 270; 20 L. T., N. S. 544; 17 W. R. 683—C. C. R.

On an indictment for obtaining money by false pretences, it appeared that the prisoner, on engaging an assistant from whom he received a deposit, represented to him that he was doing a good business, and that he had sold a good business for a certain large sum, whereas the business was worthless, and he had been bankrupt:—Held, that the indictment could not be sustained, upon either of the representations. Reg. v. Williamson, 21 L. T., N. S. 444—Byles.

## (b) By Means of False Orders.

B. was one of many persons employed whose wages were paid weekly at a pay-table. On one occasion, when B.'s wages were due, the prisoner said to a little boy, "I will give you a penny if you will go and get B.'s money." The boy innocently went to the pay-table, and said to the treasurer, "I am come for B.'s money;" and B.'s wages were given to him. He took the money to the prisoner, who was waiting outside, and who gave the boy the promised penny; Held, that the prisoner could not be convicted on the charge of obtaining the money from the treasurer by falsely pretending to the treasurer that he, the prisoner, had authority from B. to receive his money, or of obtaining it from the treasurer and the boy, by falsely pretending to the boy that he had such authority, or of obtaining it

have been convicted on a count charging him with obtaining it from the treasurer, by falsely pretending to the treasurer that the boy had the authority from B. to receive the amount. Reg. v. Butcher, Bell, C. C. 6; 4 Jur., N. S. 1155; 28 L. J., M. C. 14; 7 W. R. 38; 32 L. T. 110; 8 Cox, C. C. 77.

A surveyor of highways, having authority to order gravel for the roads, ordering gravel as usual, and applying it for his own use, is not liable to a charge of obtaining it by false pretences; nor for larceny, unless it appears that he did not mean to pay for it.  $Reg. \ v.$ Richardson, 1 F. & F. 488—Wightman.

An indictment that B. obtained twenty yards of carpet by falsely pretending that a certain person who lived in a large house down the street, and had had a daughter married some time back, had been at him about some carpet, and had asked him to procure a piece of carpet, whereas no such person had been at him about any carpet, or had any such person asked him to procure any piece of carpet. evidence was that B. obtained twenty yards of carpet by stating to the prosecutor, who was a shopkeeper in a village, that he wanted some carpeting for a family living in a large house in the village who had had a daughter lately married; that B. afterwards sold the carpeting so obtained to two different persons, and a lady was called, who lived in the village, whose daughter was married about a year previously, and who stated that she had not sent B. to the prosecutor's shop for the carpet:—Held, that there was a sufficient false pretence alleged and proved, and that it was sufficiently negatived by the evi-Reg. v. Burnsides, Bell, C. C. 282; 8 Cox, C. C. 370; 30 L. J., M. C. 42; 9 W. R. 37; 3 L. T., N. S. 311,

tence to the boy; but that he might | (c) By Means of Fulse Accounts. A workman, employed by clothiers, was to keep an account of the number of shearman employed, and the amount of their earnings and wages, which he was weekly to deliver to a clerk, in writing, who paid him the amount; he delivered in a false account, charging for more work, and of other men, than was actually done, by which he obtained a larger sum than was actually due:—Held, an obtaining money under false pretences, within 30 Geo. 2, c. 24, because without the false pretence he would not have obtained the credit, and was not like a case of money paid generally on account. Rex v. Mitchell, 2 East, P. C. 830.

A., the servant of B., rendered an account to B. of 14l. 1s. 2d., as due from A. to his workmen, and B. gave A. a cheque for the amount. All that sum was so due except 7s., which A. kept, when he got the cheque cashed, and paid the workmen the residue. In an indictment it was charged that by this false pretence, A. obtained the cheque from B., with intent to defraud him of the same. It was objected, that the intent was only to defraud B. of a part of the proceeds of the cheque. A. was convicted, and the judges held the conviction right, and that the evidence supported the count. Reg. v. Leonard, 2 C. & K. 514; 1 Den. C. C. 304.

A servant of A. applied to B. for payment of 17s. due from B. to A. B. refused to pay it without A.'s receipt. The servant went away, and returned with this document, whereupon B. paid the debt: -Held, a question for the jury, whether the servant tendered the receipt as the handwriting of A., which would make him liable on this indictment, or as his own, which would make his act a false pretence. Reg. v. Inder, 1 Den. C. C. 325.

It was the prisoner's duty, as

bailiff to the prosecutor, to pay and receive monies. Upon an account rendered of such payments and receipts, it appeared he had charged his master with five payments of 1l. 8s. instead of 1l. 4s., the sums he had actually paid. There was also a similar overcharge of two other amounts:-Held, that the prisoner was wrongly convicted of larceny, the offence, if any, being that of obtaining money by false pretences. Reg. v Ğreen, Dears. C. C. 323; 18 Jur. 158.

It was the duty of the prisoner, who was a servant of the prosecutors, in the absence of their chief clerk, to purchase and pay for, on behalf of his masters, any kitchen stuff brought to their premises for sale. On one occasion he falsely stated to the chief clerk that he had paid 2s. 3d. for kitchen stuff, which he had bought for his masters, and demanded to be paid for The clerk on this paid him 2s. 3d. out of the money which his master had furnished him with to pay for the kitchen stuff. The prisoner applied the money to his own use:—Held, that as the clerk had delivered the money to the prisoner with the intention of parting with it altogether, the prisoner was not liable to an indictment for stealing the money, but that he might have been indicted for obtaining by false pretences. Reg. v. Barnes, T. & M. 387; 2 Den. C. C. 59; 14 Jur. 1123; 20 L. J., M. C. 34.

It was the duty of a servant to ascertain daily the amount of dock dues payable by his master, and, having ascertained it, to apply to his master's cashier for the amount, and then to pay it in discharge of the dues. On one occasion, by representing falsely to the cashier that the amount was larger than it really was, as he well knew, he obtained from the cashier the sum he stated it to be, and then paid the real amount due, and appropriated

the difference:—Held, that his offence was not larceny, but obtaining money by false pretences. Reg. v. Thompson, L. & C., C. C. 233; 9 Cox, C. C. 222; 32 L. J., M. C. 57; 8 Jur., N. S. 1162; 11 W. R. 41; 7 L. T., N. S. 393.

By Means of False Accounts.]— An indictment alleged that the prisoner obtained a coat by falsely pretending that a bill of parcels of a coat, value 14s. 6d., which 4s. 6d. had been paid on account, and that 10s. only was due, was a bill of parcels of another coat of the value of 22s. The evidence was that the prisoner's wife had selected the 14s. 6d. coat for him, subject to its fitting him, and had paid 4s. 6d. on account, for which she received a bill of parcels giving credit for that amount. On trying on the coat it was found to be too small, and the prisoner was then measured for one to cost 22s. When that was made it was tried on by the prosecutor, who was not privy to the former part of the transaction. The prisoner when the coat was given to him handed the bill of parcels for the 14s. 6d. and 10s., saying, "There is 10s. to pay." The bill was receipted, and the prisoner took the 22s. coat away with The prosecutor stated that believing the bill of parcels to refer to the 22s. coat, he parted with that coat on payment of 10s., otherwise he should not have done so:—Held, that there was evidence to support a conviction. Reg. v. Steels, 17 L. T., N. S. 666; 16 W. R. 341; 11 Cox, C. C. 5—C. C. R.

# (d) By Means of Contracts.

Knowingly exposing to sale and selling wrought gold under the sterling alloy, as and for gold of the true standard weight, which is indictable in a goldsmith, is a private imposition only in a common person. Rex v. Bower, Cowp. 323.

Delivering less beer in a cask

than contracted for, as the due quantity is not an indictable offence. Rex v. Wheatley, 1 W. Bl. 273; 2 Burr. 1129.

Nor is delivering less oats than the quantity contracted for as the due quantity. Rev v. Dunnage, 2 Burr. 1130.

A false pretence knowingly made to obtain money is indictable, though the money is obtained by means of a contract which the prosecutor was induced to make by the false pretence of the prisoner. Reg. v. Abbott, 1 Den. C. C. 273; 2 C. &. K. 630; 2 Cox, C. C. 430; S. P., Reg. v. Dark, 1 Den. C. C. 276; Reg. v. Kenrick, D. & M. 208; 5 Q. B. 49.

A person, who by falsely representing himself to fill a particular character, induces another to enter into a contract with him for board and lodging, and is supplied accordingly with various articles of food, cannot be convicted of obtaining goods by false pretences, the obtaining of the goods being too remotely connected with the false representation. *Reg.* v. *Gardner*, 7 Cox, C. C. 136; 2 Jur., N. S. 598; 25 L. J., M. C. 100.

A carrier, having ordered a cask of ale, said, after he had possession of it, "This is for W.":—Held, that an indictment for obtaining it by falsely pretending that he was sent for it by W. could not be sustained. Reg. v. Brooks, 1 F. & F. 502—Wightman.

The prisoner having pretended to sell goods to A. which he had pretended to buy for him from B., and then the goods having been sent by B. to A., having got the money from A.:—Held, not indictable for obtaining goods from B. by false pretences. Reg. v. Martin, 1 F. & F. 501—Wightman.

If one professes to sell an interest in property, and receives the purchase-money, the vendee taking the usual covenant for title; and it turns out that the yender has in fact previously sold his interest in the property to a third person; this is not sufficient to support an indictment for obtaining money by false pretences. Rex v. Codrington, 1 C. & P. 661—Littledale.

When a contract has been entered into by reason of false representations, and goods or money obtained under the contract, it is too remote to charge the obtaining of the goods or money by the false pretences. Reg. v. Bryan, 2 F. & F. 567—Hill.

The prisoner, by false and fraudulent representations made to the prosecutor, as to his business, customers, and profits, induced the prosecutor to enter into a partnership with him, and to advance 500l., as part of the capital of the concern; and the prosecutor, after such advance, recognized and acted upon such partnership:—Held, that this was not an obtaining of money by false pretences. Reg. v. Watson, Dears. & B. C. C. 348; 4 Jur., N. S. 14; 27 L. J., M. C. 18; 7 Cox, C. C. 364.

The prisoner entered into partnership with the prosecutors, and it was subsequently agreed that he should travel about the country to obtain orders, and have a commission upon all orders he might receive, such commission to be paid to him as soon as he received the orders, and to be payable out of the capital funds of the partnership before dividing any profits. He falsely represented to his partners that he had obtained a certain order, and in consequence was paid his commission thereon:—Held, that this was a mere matter of account between the partners, and that the prisoner was, therefore, not guilty of obtaining money by false pretences. Reg. v. Evans, 9 Cox, C. C. 238; L. & C. 252; 9 Jur., N. S. 184; 32 L. J., M. C. 38; 11 W. R. 125; 7 L. T., N. S. 507.

usual covenant for title; and it A prisoner was indicted for obturns out that the vendor has in taining by false pretences a spring-

By false pretences, he induced | the prosecutor to enter into a contract to build and deliver a van for a certain sum of money, and the prosecutor on the faith of those pretences built and delivered the van in pursuance of the original order, although the prisoner countermanded the order after the building and before the delivery:—Held, that, to bring the case within the statute, it is not necessary that the chattel should be in existence when the false pretence is made, but that the obtaining is within the statute if the pretence is a continuing one, so that the chattel is made and delivered in pursuance of the pretence, that the question whether the pretence is or is not such a continuing one, is one of fact for the jury, and that here there was evidence from which the jury might infer that it was such a continuing one. Reg. v. Martin, 36 L. J., M. C. 20; 1 L. R., C. C. 56; 10 Cox, C. C. 383.

#### (e) As to the Quality of Articles of Merchandise.

A simple misrepresentation of the quality of goods is not a false pretence, provided the goods are in specie that which they are represented to be. Reg. v. Bryan, Dears. & B. C. C. 265; 3 Jur., N. S. 620; 26 L. J., M. C. 84; 7 Cox, C. C.

For the purpose of procuring advances of money by way of pledge, a party produced spoons to the prosecutors, who were pawnbrokers, and falsely and fraudulently stated that "they were of the best quality; that they were equal to Elkington's A; that the foundation was of the best material; and that they had as much silver on them as Elkington's A":—Held, that the representations being merely as to the quality of the articles, were not false pretences within the statute, as the articles delivered to specie as he had professed them to be, though of inferior quality to what he had stated. Ib.

A. falsely pretended to a pawnbroker that a chain was silver. The pawnbroker lent A. 10s, on the chain, without placing any reliance upon the statement of A., but relying on his own examination and The chain was made of a composition worth about one farthing an ounce:—Held, that he was properly convicted of attempting to obtain money by false pretences, the statement being a false pretence within the statute. Reg. v. Roebuck, Dears. & B. C. C. 24; 2 Jur., N. S. 597; 25 L. J., M. C. 101; 7 Cox, C. C. 126.

A wilful misrepresentation of a definite fact with intent to defraud, cognisable by the senses—as where a seller represents the quantity of coals to be fourteen cwt., whereas it is in fact only eight cwt., but so packed as to look more; or where the seller, by manœuvring, contrives to pass off tasters of cheese as if extracted from the cheese offered for sale, whereas it is not—is a false pretence. Reg. v. Goss, Bell, C. C. 208; 8 Cox, C. C. 264; 6 Jur., N. S. 178; 29 L. J., M. C. 86; 8 W. R. 193; 1 L. T., N. S. 337.

On the trial an indictment for false pretences, it was proved that the prisoner offered a chain in pledge to a pawnbroker, and required money to be advanced upon it, representing that it was gold. On being tested, it turned out to be a compound of brass, silver, and gold, but the gold was very minute in quantity:—Held, not a false pre-Reg. v. Lee, 8 Cox, C. C. 233—Chambers, C. S.

B. was in the habit of selling haking powders, wrapped in printed wrappers, entitled "B.'s Baking Powders," and having his printed signature at the end. The prisoner got printed a quantity of wrappers in imitation of those of B., only the pawnbrokers were the same in leaving out B.'s signature, and sold

spurious powders wrapped up in these labels as B.'s powders: Held, that the prisoner was not guilty of forging the wrappers, or uttering forged wrappers, though he might be indictable for the fraud, on a charge of obtaining money by false pretences. Reg. v. Smith, Dears. & B. C. C. 566; 4 Jur., N. S. 1003; 27 L. J., M. C. 225.

An indictment charged that the defendant knowing and falsely pretended that a horse was sound, and that he himself was a farmer, at O., negativing both pretences in the The defendant was usual way. convicted, but a case reserved in which, after stating that the various allegations in the indictment were proved, and that the defence was that this was a case of giving a false warranty, and therefore not indictable, the question was put, whether the conviction could be sustained. The court having directed an amendment, the facts proved were set out more specifically; but it was not stated as a fact that the defendant knew the horse to be unsound, though evidence was stated from which that inference might drawn; nor was it stated what direction had been given to the jury:—Held, that, as the case was framed, the conviction must be quashed; as the court, not knowing what direction had been given, could not answer the question put in the affirmative; and as it was consistent with the case that the jury might have been told that even if the defendant did not know that the horse was unsound, he might be convicted upon the other false pretence alone. Reg. v. Keighley, Dears. & B. C. C. 145; 7 Cox, C. C. 217.

A man went into a pawnbroker's shop in the middle of the day, and laid down eleven thimbles on the counter, saying, "I want 5s. on them"; the pawnbroker's assistant asked the man if they were silver, and he said they were. The assist-

ant tested them, and found they were not silver, and in consequence did not give the man any money, but sent for a policeman, and gave him into his custody:—Held, that the conduct of the man who presented the thimbles amounted to an attempt to commit the statutable misdemeanor of obtaining money under false pretences, and by consequence that if the money had been obtained that statutable offence would have been complete. Reg. v. Ball, Car & M. 249—Mirehouse, C. S., after consulting some of the judges.

As to the Quality of Articles of Merchandise.]—A false representation that a stamp on a watch was the hall mark of the Goldsmiths' Company, and that the number 18, part thereof, indicated that the watch was made of eighteen-carat gold, is an indictable offence, and is not the less so because accompanied by a representation that the watch was a gold one, and some gold was proved to have been contained in its composition. Reg. v. Suter, 17 L. T., N. S. 177; 16 W. R. 141; 10 Cox, C. C. 577—C. C. R.

L. and W. induced the prosecutor to buy certain plated goods at an auction, at which L. was acting as auctioneer, for 71., on the representation that they were the best silver plate, lined with gold, and worth 201.; the foundation of the goods was Britannia metal, instead of nickel, as in the best goods, covered with a transparent film of silver, and they were worth only about 30s.:—Held, that there was no false pretence, and that an agreement between two persons to dispose of these goods in the way they were disposed of was not a conspir-Reg. v. Levine, 10 Cox, C. C. 374—Chambers, C. S.

(f) As to the Quantity or Weight of Articles of Merchandise. The defendant had contracted with the guardians of a poor law union to deliver loaves of a specified weight to any poor persons bringing a ticket from the relieving The tickets were to be returned by the defendant at the end of each week, with a statement of the number of tickets sent back, whereupon he would be credited for the amount, and the money would be paid at the time stipulated in the contract. The defendant delivered to certain poor people who brought tickets leaves of less than the specified weight, returned the tickets with a note of the number sent, and obtained credit in account for the loaves so delivered, but before the time for payment had arrived the fraud was discovered:—Held, that the delivery of a less quantity of bread than that contracted for was a mere private fraud, no false weights or tokens having been used, and therefore not an indictable offence: that the defendant was properly convicted of attempting to obtain money, for although he had only obtained credit in account, and could not, therefore, have been convicted of the offence of actually obtaining money by false pretences, yet he had done all that was depending on himself towards the payment of the money, and was therefore guilty of the attempt: and that this was a case within 7 & 8 Geo. 4, c. 29, s. 53, because it was an attempt to obtain money by a false and fraudulent representation of an antecedent fact: it was not a mere sale of goods by a false pretence of their weight. Reg. v. Eagleton, 1 Jur., N. S. 940; 24 L. J., M. C. 158; Dears. C. C. 515; 6 Cox, C. C. 559.

The defendant agreed with the prosecutrix to sell and deliver to her a load of coals, at a certain price per cwt. He accordingly delivered a quantity of coals, to his knowledge weighing 14 cwt. He, however, falsely and fraudulently represented that the quantity he

had delivered weighed 18 cwt., and thereby obtained the price of 18 cwt.:—Held, that he was properly convicted of the offence of obtaining money by false pretences. Reg. v. Sherwood, Dears. & B. C. C. 251; 3 Jur., N. S. 547; 26 L. J., M. C. 217.

The defendant represented to the prosecutor that he had done a certain quantity of work, and claimed a certain sum as due to him in respect of such work. The prosecutor paid him the amount claimed, although he knew that the representation was untrue:—Held, that this was not an obtaining money by means of false pretences. Reg. v. Mills, Dears. & B. C. C. 205; 3 Jur., N. S. 447; 26 L. J., M. C. 79.

A prisoner was convicted on an indictment for obtaining money by false pretences. The prosecutors bought of the prisoner and paid him for a quantity of coal, upon a false representation by him that there were 14 cwt., whereas, in fact, there were only 8 cwt., but so packed in the cart in which they were as to have the appearance of a larger quantity:—Held, that the false representation as to the quantity of the coal was an indictable false pretence, and that the conviction was right. Reg. v. Ragg, Bell, C. C. 215; 8 Cox, C. C. 262; 6 Jur., N. S. 178; 29 L. J., M. C. 86; 8 W. R. 193; 1 L. T., N. S. 337.

If a man is selling an article by weight, and falsely represents the weight to be greater than it is, and thereby obtains payment for a quantity greater than that delivered, he is indictable for obtaining money by false pretences. Secus, if he is selling the article for a lump sum, and merely makes the false representation as to the weight in order to induce the purchaser to conclude the bargain. Reg. v. Ridgway, 3 F. & F. 838—Bramwell.

knowledge weighing 14 cwt. He, A false affirmation of the weight however, falsely and fraudulently of an article sold by weight, with represented that the quantity he intent to defraud, is indictable as a false pretence. Reg. v. Lee, L. & C. 418; 9 Cox, C. C. 460; 32 L. J., M. C. 129; 12 W. R. 750; 10 L.

T., N. S. 348.

An indictment charged, that H. R. having in his possession a certain weight of 28 lbs., did falsely pretend to C. that a quantity of coals which he delivered to C. weighed 16 cwt. (meaning 1792 lbs. weight), and were worth 1l., and that the weight was 56 lbs.; by means of which he obtained a sovereign from C., with intent to defraud him of part thereof, to wit, 10s.; whereas the coals did not weigh 1792 lbs., and were not worth 11.; and whereas the weight was not 56 lbs.; and whereas the coals were of the weight of 896 lbs. only, and were not worth more than 10s.; and whereas the weight was of 28 lbs. only. It was objected that all the pretences, except that respecting the weight, were false affirmations, and that, as to the weight, there was no allegation to connect the sale of the coals with the use of the weight. defendant was convicted, and the conviction was held to be wrong. Rex v. Reed, 7 C. & P. 848.

# (g) By Promises of Marriage.

An indictment will lie for fraudulently obtaining goods under a pretence of a treaty of marriage.

Anon. Lofft, 146.

The prisoner paid his addresses to the prosecutrix, and obtained a promise of marriage from her, which promise she afterwards refused to ratify. He then threatened her with an action, and by this means obtained money from her. During the whole of the transactions the prisoner had a wife. On an indictment against him for obtaining money under false pretences, the pretences laid were, first, that he was unmarried; and secondly, that he was entitled to bring and maintain his action against her for a breach of promise of marriage:—Held, per Lord Denman, C. J., and Maule,

J., that the fact of the prisoner paying his addresses was sufficient evidence for the jury on which they might find the first pretence, that he was a single man and in a condition to marry; and, per Maule, J., that there was sufficient evidence on which to find the falseness of the other pretence, that he was entitled to maintain his action for breach of promise of marriage; and that such latter false pretence was a sufficient false pretence within the statute. Reg. v. Copeland, Car. & M. 516.

An indictment for obtaining money from H. under the false pretence that the prisoner intended to marry H., and wanted the money to pay for a wedding-suit he had purchased, is not sufficient to sustain a conviction. Reg. v. John-

ston, 2 M. C. C. 254.

A., obtaining money from the prosecutrix by falsely pretending that he was unmarried, that he would furnish a house with the money, and would then marry her, is properly convicted of obtaining money by false pretences. Reg. v. Jennison, 9 Cox, C. C. 158; 8 Jur. J., N. S. 442; L. & C. 157; 31 L. J., M. C. 146; 10 W. R. 488; 6 L. T., N. S. 256.

## (h) By means of Cheques, Bills of Exchange or Promissory Notes.

A person, who under a mere false pretence of purchasing lottery tickets, bargains with the holder of them, and obtains the delivery of them by giving a draft on a banker, with whom he had no cash, for the amount of them, is not indictable for a fraud at common law; for, in order to constitute this offence, the property must be obtained either by conspiracy, or by means of a false token as well as a false pretence, and not, as in this case, by a mere false assertion, or a bare naked Rex v. Lara, 2 Leach, C. C. 652; 2 East, P. C. 819, 827; 6 T. R. 565.

Obtaining goods by means of a

cheque which the party knows will not be paid, is an indictable offence.

Rex v. Jackson, 3 Camp. 370—

Bayley.

A. was charged with falsely pretending that a post-dated cheque, drawn by himself, was a good and genuine order for 25l., and of the value of 25l., by means of which he obtained a watch and a chain. It was found by the jury that, before the completion of the sale, and the delivery of the watch by the prosecutor to the prisoner, the prisoner represented to the prosecutor that he had an account with the bankers on whom the cheque was drawn, and that he had a right to draw the cheque, though he postponed the date for his own convenience, all which was false; and that he represented that the cheque would be paid on or after the day of the date, but that he had no reasonable ground to believe that it would be paid, or that he could provide funds to pay it. The prisoner was convicted, and the judges held the conviction right. Rex v. Parker, 7 C. & P. 825; 2 M. C. C. 1.

Obtaining credit in account from the party's own banker, by drawing a bill of exchange on a person on whom the party has no right to draw, and which has no chance of being paid, is not a false pretence within 7 & 8 Geo. 4, c. 29, s. 53, though the banker pays money for him in consequence to an extent that he would not otherwise have done. Rex v. Wavell, 1 M. C. C. 224.

If a person, by false pretences, obtains a check on a banker on unstamped paper, payable to D. F. J., and not payable to bearer, it is not an obtaining a valuable security by false pretences. Rex v. Yates, Car. C. L. 333; 1 M. C. C. 170. But see now 21 & 22 Vict. c. 20; 23 & 24 Vict. c. 118, s. 18, and 17 & 18 Vict. c. 83. s. 27.

But obtaining, as a loan, from the lowing day, he may be convicted drawer of a bill accepted by the of obtaining goods under false pre-

prisoner and negotiated by the drawer, part of the amount, for the purpose of paying the bill, under the false pretence that the prisoner was prepared with the residue of the amount, is an offence within 7 & 8 Geo. 4, c. 29, s. 53, the prisoner being shown not to be so prepared, and not intending so to apply the money. Rex v. Crossley, 2 M. & Rob. 17; 2 Lewin, C. C. 164—Patteson.

The prisoner was convicted upon an indictment, charging him with stealing a cheque. It was proved that he was clerk to a savings bank, and received the cheque from a manager of the bank, upon a false representation that one of the depositors had given notice of withdrawal, and for the purpose of handing it over to the depositor. It was found that, according to the usual course of business, if a depositor could not attend at a proper time to receive the cheque, it was handed to the prisoner, as the agent of the depositor:—Held, that the case was one of false pretence, and not larceny, and that the conviction was wrong. Reg. v. Essex, Dears. & B. C. C. 371; 4 Jur., N. S. 16; 27 L. J., M. C. 20; 7 Cox, C. C. 384.

If an indictment for attempting to obtain money under false pretences, charges it to have been attempted by means of a paper writing purporting to be an order for money, and the instrument cannot be considered as stated in the indictment to be such an order, it is bad. Rex v. Cartwright, R. & R. C. C. 106.

But an indictment that A. unlawfully did falsely pretend that a printed paper was a good and valid promissory note, is sufficient, without setting out the paper. Reg. v. Coulson, T. &. M. 332; 1 Den. C. C. 592; 14 Jur. 557; 19 L. J., M. C. 182.

Where a prisoner obtained goods on the faith of a false statement that a bill which he gave for the price of them would be paid on the following day, he may be convicted of obtaining goods under false pre-

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tences, though such bill on the face of it was not due till after that day. Reg. v. Hughes, 1 F. & F. 355—Watson.

An indictment stated that the defendant falsely pretended to W. that he was a captain in the East India Company's service, and that a promissory note which he "then and there produced and delivered to W., purporting to be made for the payment of 21l., not saying by whom it purported to be drawn, nor otherwise describing it, was a good and valuable security for 211.; by which false pretences he obtained," &c.: whereas the defendant was not a captain in the company's service; and whereas the promissory note which he then and there produced, and delivered to W., "was not a good and valuable security for 21l., or for any other sum":— Held, that the indictment did not sufficiently describe the note, or show how it was wanting in value; and that a conviction could not be supported on the representation as to the defendant's character, because the false pretences were so connected on the record, that one could not be separated from the other. Reg. v. Wickham, 2 P. & D. 333; 10 A. & E. 34.

## (i) By passing off flash or worthless Bank Notes.

The fact of uttering a counterfeit note as a genuine one is tantamount to a representation that it was so; and it is a false pretence, notwithstanding the note upon the face of it would have been good for nothing in point of law, even if true. Rex v. Freeth, R. & R. C. C. 127.

On an indictment for delivering in payment for a horse certain promissory notes, as for good and available promissory notes, which the prisoner knew to be not good, nor of any value; the notes purported to be the notes of a country bank which was supposed to have failed:

—Held, that at all events it was

necessary to prove that the notes were bad and of no value. Rex v. Flint, R. & R. C. C. 460.

Indictment for false pretences, in passing a note of a bank that had stopped payment as a good note. The prisoner knew that the bank had stopped payment; but it appeared that two only of the partners or the bank had become bankrupt, and that the third had not:—Held, that the prisoner must be acquitted. Rex v. Spencer, 3 C. & P. 420—Gaselee.

If a person passes a note of a country bank for 5l. payable on demand as a good note, and as of the value of 5l, knowing that the bank is insolvent, and has stopped payment, and cannot pay the note in full, he may be indicted for obtaining money by false pretences. Reg. v. Evans, 5 Jur., N. S. 1361; 29 L. J., M. C. 20; 1 L. T., N. S. 108; Bell, C. C. 187; 8 Cox, C. C. 257.

But where the evidence shows that the bank has paid a dividend, the direction to the jury that there is evidence that the note is not of any value, will be wrong. *Ib*.

Passing off a flash note as a Bank of England note on a person unable to read, and obtaining from him in exchange for it five pigs, of the value of 3l. 17s. 6d., and 1l. 2s. 6d. change, is a false pretence. Reg. v. Coulson, T. & M. 332; 1 Den. C. C. 592; 14 Jur. 557; 19 L. J., M. C 182; 4 Cox, C. C. 227.

The defendant fraudulently offered a 1l. Irish bank note as a note for 5l., and obtained change as for a 5l. note. The person from whom the change was obtained could read, and the note itself upon the face of it clearly afforded the means of detecting the fraud:—Held, that this was obtaining money by means of false pretences. Reg. v. Jessop, Dears. & B. C. C. 442; 4 Jur., N. S. 123; 27 L. J., M. C. 70; 7 Cox, C. C. 399.

which was supposed to have failed: An indictment charging that the —Held, that at all events it was defendant unlawfully did falsely pre-

tend to S. that a paper writing which he produced to S. was a good 51. Ledbury Bank note, by means whereof he unlawfully obtained money from S., with intent to cheat and defraud him of the same: whereas, in truth and in fact, the paper writing was not a good 5l. note of the Ledbury Bank, is bad, as it does not charge that the defendant knew that it was not a good 5l. note of the Ledbury Bank, and is not aided by the allegation of the intent to defraud. Reg. v. Philpotts, 1 C. & K. 112— Wightman.

On an indictment for obtaining money by falsely pretending that the promissory note of a bank that has stopped payment by reason of bankruptcy, was a good and valuable security for the payment of the amount mentioned in it, and was of that value, it is not necessary to prove the proceedings in bankruptcy. It is sufficient to prove the time when the bank stopped payment, and that cash could not be obtained for the note on its being presented for payment at the place where it was made payable. v. Smith, 6 Cox, C. C. 314.

The prisoner, knowing that some old country bank notes had been taken by his uncle forty years before, and that the bank had stopped payment, gave them to a man to pass, telling him to say, if asked about them, that he had taken them from a man he did not know. man passed the notes, and the prisoner obtained value for them. appeared that the bankers were made bankrupt:—Held, that he was guilty of obtaining money by false pretences. Reg. v. Dowey, 17 L. T., N. S. 481; 16 W. R. 344; 37 L. J., M. C. 52; 11 Cox, C. C. 115 -C. C. R.

Held, also, that the bankruptcy proceedings need not be proved.

(j) In respect of what Chattels or Securities.

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larceny at common law, were not chattels, within 7 & 8 Geo. 4, c. 29, s. 53. Reg. v. Robinson, Bell, C. C. 34; 5 Jur., N. S. 203; 28 L. J., M. C. 58; 7 W. R. 203; 32 L. T.

G., secretary to a burial society, was indicted for falsely pretending that a death had occurred, and so obtaining from the president an order on the treasurer in the following "Bolton United Burial Soform: ciety, No. 23. Bolton, September 1st, 1853. Mr. A. Entwistle, treasurer; please to pay the bearer 21. 10s., Greenhalgh, and charge the same to the society. Robert Lord, Benjamin Beswick, president":-Held, that this was a valuable security under 7 & 8 Geo. 4, c. 29, s. 53, as explained by sect. 5. Reg. v. Greenhalgh, 1 Dears. C. C. 267; 6 Cox. C. C. 257.

B. was indicted for obtaining by false pretences from a railway company a printed ticket, with intent to defraud the company of the same; the ticket enabled the prisoner to travel free from B. to H., and was to be given back to the company at H.:-Held, that the ticket was a chattel within 7 & 8 Geo. 4, c. 29, s. 53, and that the attempt to defraud the company of the same was not affected by the fact of the ticket having to be returned at the end of the journey. Reg. v. Boulton, 1 Den. C. C. 508; 2 C. & K. 917; 13 Jur., 1034; 19 L. J., M. C. 67; 3 Cox, C. C. 576.

A., by means of false pretences, engaged with the prosecutrix for lodging at 10s. a week. He accordingly became a lodger in her house, and a few days afterwards expressed a wish to become a boarder. He was then supplied with board as well as lodging at 11. 1s. per week. He was afterwards indicted for obtaining goods (the board) by means of false pretences, and convicted:—Held. that the conviction could not be supported, as the goods were sup-Dogs not being the officers of pueds cooperemotely from the false

pretence. Reg. v. Gardner, Dears. & B. C. C. 40; 2 Jur., N. S. 598;

25 L. J., M. C. 100.

A conviction for obtaining a chattel by false pretences is good, although the chattel is not in existence at the time of the pretence being made, provided the subsequent delivery of the chattel is directly connected with the false pretence. Reg. v. Martin, 1 L. R., C. C. 56; 36 L. J., M. C. 20; 10 Cox, C. C. 383.

Whether or not there is such a direct connexion is a question for the jury. *Ib*.

#### 3. Cheats.

Indictable.]—If there is a plan to cheat a man of his property, under colour of a bet, and he parts with the possession only to deposit it as a stake with one of the confederates; the taking by such confederate is felonious. Rex v. Robson, R. & R. C. C. 413.

To obtain property from another by the practice of ring-dropping is felony, if the jury finds it was obtained under a preconceived design to steal it.—Rex v. Patch, 1 Leach, C. C. 238; 2 East, P. C. 678; S. P. Rex v. Marsh, 1 Leach, C. C. 345.

A person who induces another to deliver bank notes to him, by the practice of ring-dropping, on a condition that if he does not restore them in such a time, the entire value of the ring will belong to the person delivering the notes, is guilty of felony; for, although the possession of the notes is parted with, the property still remains in the owner. Rex v. Watson, 2 Leach, C. C. 640; 2 East, P. C. 680.

To aid and assist a person to the jurors unknown, to obtain money by the practice of ring-dropping, is felony, if the jury finds that the prisoner was confederating with the person unknown to obtain the money by means of this practice. Rex v. Moore, 1 Leach, C. C. 314; 2 East, P. C. 679.

It is an indictable offence if two effect a cheat by means of one pretending to be a merchant, and the other a broker, and as such bartering pretended wines for hats. Rex v. Macarty, 2 East, P. C. 823.

If a man in the course of his trade, openly carried on, puts a false mark or token upon a spurious article, so as to pass it off as a genuine one, and the article is sold and money obtained by means of the false mark or token, he is guilty of a cheat at common law. Reg. v. Closs, Dears. & B. C. C. 460; 3 Jur., N. S. 1309; 27 L. J., M. C. 54.

If a person knowingly sells as an original, a copy of a picture, with the painter's name imitated upon it, and by means of the imitated name, knowingly and fraudulently induces another to buy and pay for the picture as a genuine work of the artist, he may be indicted for a cheat at common law, by means of a false token; but he cannot be indicted for forging, or uttering the forged name of the painter; for the crime of forgery must be committed with some document in writing, and does not extend to the fraudulent imitation of a name put on a picture merely as a mark to identify it as the painter's work.

Indictment.]—An indictment for such an offence must contain an averment that it was by means of such false mark or token that he was enabled to pass off the article and obtain the money. Ib.

In an indictment under 8 & 9 Vict. c. 109, s. 17, for winning money at cards by fraud, unlawful device and ill practice, it is not necessary to state to whom the money belonged. Reg. v. Moss, Dears. & B. C. C. 104; 2 Jur., N. S. 1196; 26 L. J., M. C. 9; 7 Cox, C. C. 200.

 Inducing Persons by Fraud to execute or destroy Valuable Securities.

. 314; 2 East, By 24 & 25 Vict. c. 96, s. 90, "whosoever, with intent to defraud Digitized by Microsoft®

" or injure any other person, shall by | "any false pretence fraudulently "cause or induce any other person "to execute, make, accept, indorse " or destroy the whole or any part "of any valuable security, or to "write, impress or affix his name, " or the name of any other person, " or of any company, firm or co-"partnership, or the seal of any "body corporate, company or so-"ciety, upon any paper or parch-" ment, in order that the same may "be afterwards made or converted "into or used or dealt with as a "valuable security, shall be guilty " of a misdemeanor." (Previous enactment, 21 & 22 Vict. c. 47.)

Inducing a person by a false pretence to accept a bill of exchange, was not an obtaining a valuable security by a false pretence within 7 & 8 Geo. 4, c. 29, s. 53. Reg. v. Danger, Dears. & B. C. C. 307; 3 Jur., N. S. 1011; 26 L. J., M. C. 185; 7 Cox, C. C. 303.

## 5. Amounting to Larceny.

By 24 & 25 Vict. c. 96, s. 88, "if "upon the trial of any person in-"dicted for the misdemeanor of "obtaining by any false pretence "from any other person any chat-"tel, money or valuable security, "with intent to defraud, it shall be "proved that he obtained the prop-"erty in question in any such man-"ner as to amount in law to larceny, "he shall not by reason thereof be "entitled to be acquitted of such "misdemeanor, and no person tried "for such misdemeanor shall be "liable to be afterwards prosecuted "for larceny upon the same facts."

To prevent a person indicted for false pretences from being acquitted on the ground that the offence is that of felony, the false pretences laid must be proved, for under the 24 & 25 Vict. c. 96, s. 88, he is to be found guilty of the mis-Reg. v. Bulmer, L. & demeanor. C. 476; 9 Cox, C. C. 492; 10 Jur., another, by means of a false pre-

N. S. 684; 33 L. J., M. C. 171; 10 L. T., N. S. 580.

If a banker's clerk tells a customer of the house that he has paid in money on his account, and thereby induces the customer to give him a cheque for the amount, which he receives the money for, and afterwards makes fictitious entries in the books, to prevent a discovery of the transaction, it is a felonious taking of the money from the banker, without his consent, and not an obtaining of it under false pretences. Rex v. Hammon, 2 Leach, C. C. 1083; 4 Taunt. 304; R. & R. C. C. 221.

To obtain goods by false pretences from the servant of the owner, to whom they were delivered for the purpose of being carried to a customer, who had purchased them, is a taking from the possession of the master; and if so taken, with a preconcerted design to steal them, amounts to felony. Rex v. Wilkins, 1 Leach, C. C. 520; 2 East, P. C. 673.

Where a man pretending to be the servant of a person who had bought a chest of tea deposited at the company's warehouse, got a request paper and permit for the chest, and took it away with the assent of a person in the East India Company's service, who had the charge of it:—Held, to be felony. Rex v. Hench, R. & R. C. C. 163.

A., employed in a tannery, clandestinely removed certain skins of leather from the warehouse to another part of the tannery, for the purpose of delivering them to the foreman and getting paid for them as if they had been his own work: —Held, that this did not amount to larceny, but an attempt to commit the misdemeanor of obtaining money by false pretences. Reg. v. Holloway, 1 Den. C. C. 370; T. & M. 48; 3 New Sess. Cas. 410; 2 C. & K. 942; 13 Jur. 86; 18 L. J., M.

When one servant obtains from

tence, the goods of the master, which the latter had no authority to deliver to him, the offence is larceny and not false pretences. Reg. v. Robins, 6 Cox, C. C. 420; 18 Jur. 1058.

A., having bought a watch in London, returned it to the seller to be regulated. B. fraudulently wrote in the name of A. to the seller, requesting him to send it in a letter to the post-office at C., and on its arrival at C. personated A. and received the watch:—Held, that B. was guilty, not of obtaining by false pretences but of larceny, in taking the watch by fraud from the postmaster, as the postmaster was the mere servant of the true owner, and if the seller had any special property in the watch, it ceased when he sent it through the post. Reg. v. Kay, 7 Cox, C. C. 289; 3 Jur., N. S. 546.

#### 6. Parties Indictable.

Where the pretence is conveyed by words spoken by one defendant in the presence of others who are acting in concert together, they may be all indicted jointly. Young v. Rex (in error),  $ilde{3}$  T.  $ilde{ ext{R.}}$  98; 2  $ilde{ ext{East}}$ , P. C. 82, 833; 1 Leach, C. C. 505.

On an indictment for obtaining money under false pretences, a party who has concurred and assisted in the fraud may be convicted as principal, though not present at the time of making the pretence and obtaining the money. Reg. v. Moland, 2 M. C. C. 276.

#### 7. Indictment.

Form of Averments. -By 24 & 25 Vict. c. 96, s. 88, "it shall be "sufficient in any indictment for "obtaining or attempting to obtain "any such property—(i. é., any "chattel, money or valuable secur-"ity, see sect. 87 and sect. 1)—by "false pretences to allege that the " party accused did the act with in-"tent to defraud, without alleging

"lar person, and without alleging "any ownership of the chattel, "money, or valuable security; and " on the trial of any such indictment "it shall not be necessary to prove "an intent to defraud any particu-"lar person, but it shall be sufficient "to prove that the party accused " did the act charged with an intent "to defraud." (Former provision, 14 & 15 Vict. c. 100, s. 8.)

By 14 & 15 Vict. c. 100, s. 5 (unrepealed), "in any indictment for "obtaining by false pretences any "instrument, it shall be sufficient "to describe such instrument by "any name or designation by which "the same may be usually known, " or by the purport thereof, without " setting out any copy or fac-simile "thereof, or otherwise describing "the same or the value thereof."

Allegation of False Pretence. |-An indictment for a fraud at common law, charging the false pretence to have been made to one person, and the deceit to have been practised on a different person is bad. Rex v. Lara, 2 Leach, C. C. 647; 2 East, P. C. 819, 824; 6 T. R. 565.

An indictment on a charge of obtaining goods under false pretences, is bad, if it states that the prisoner "unlawfully, knowingly, and designedly, did feloniously pretend," &c. Rex v. Walker, 6 C. & P. 657. See Rex v. Howarth, 3 Stark. 26.

An indictment for obtaining money under false pretences must allege that the defendant knew the falsehood: "falsely and fraudulently" Reg. v. Henderson, is not enough. 2 M. C. C. 192; Car. & M. 328.

In an indictment for obtaining money by false pretences under 7 & 8 Geo. 4, c. 29, it was alleged that the defendant "did unlawfully falsely pretend," &c.:—Held, that the omission of the word "knowingly" was no ground for arresting the judgment. Reg. v. Bowen, 4 "an intent to defraud any particu- New Sess. Cas. 62; 13 Q. B. 790; 13 Jur. 1045; 19 L. J., M. C. 65; 3 Cox, C. C. 483.

An indictment charging the defendant with obtaining money by false pretences, is insufficient, if it does not shew what the false pretences were. Rex v. Mason, 1 Leach, C. C. 487; 2 East, P. C. 837; 2 T. R. 581.

Indictment for falsely pretending to the prosecutor, whose mare and gelding had strayed, that he, prisoner, would tell him where they were, if he would give him a sovereign The prosecutor gave the sovereign, but the prisoner refused to tell:—Conviction held bad; the indictment should have stated that he pretended he knew where they Rex v. Douglas, 1 M. C. C. were. 462.

A first count charged that the defendant unlawfully did falsely pretend to J. L. that he, the defendant, was sent by W. P. for an order to go to J. B. for a pair of shoes, by means of which false pretence he did obtain from J. B. a pair of shoes, of the goods and chattels of J. B., with intent to defraud J. L. of the price of the said shoes, to wit, nine shillings, of the monies of J. L. second count charged that he falsely pretended to J. L., that W. P. had said that J. L. was to give him, the defendant, an order to go to J. B. for a pair of shoes, by means of which false pretence he did obtain from J. B., in the name of J. L., a pair of shoes of the goods of J. B., with intent to defraud J. L. of the same;—Held, that both of these counts were bad in arrest of judgment, as neither of them charged a sufficient false pretence. Reg. v. Tully, 9 C. & P. 227—Gurney. Sed quære, see Reg. v. Brown, 2 Cox, C. C. 348—per Patteson.

An indictment is bad charging that the defendant, contriving and intending to cheat W., on a day named, did falsely pretend to him that he, the defendant, then was a captain in her Majesty's fifth regi- due from A. to his workmen, and

ment of dragoons; by means of which false pretence he did obtain of W. a valuable security, to wit, an order for the payment of 500l., of the value of 500l., the property of W., with intent to cheat W. of the same; whereas, in truth, he was not, at the time of making such false pretence, a captain in her majesty's regiment; and the defendant, at the time of making such false pretence, well knew that he was not a captain is a good indictment after conviction and judgment; for it was not necessary to allege more precisely that the defendant made the particular pretence with the intent of obtaining the security; nor how the particular pretence was calculated to effect, or had effected, the obtaining: and the truth of the pretence was well negatived, it appearing sufficiently that the pretence was, that the defendant was a captain at the time of his making such pretence, which was the fact denied; and it was unnecessary to aver expressly that the security was unsatisfied, at any rate since 7 Geo. 4, c. 64, s. 21, the objection being taken after verdict, and the indictment following the words of the statute creating the offence. Hamilton v. Reg. (in error), 9 Q. B. 271; 10 Jur. 1028; 16 L. J., M. C. 9; 2 Cox. C. C. 11.

Intent to defraud. —An indictment stated that A. did unlawfully attempt and endeavour fraudulently, falsely and unlawfully to obtain from the Agricultural Cattle Insurance Company a large sum of money, to wit, 22l. 10s., with intent to cheat and defraud the company:— Held, first, that the nature of the attempt was not sufficiently forth. Reg. v. Marsh, 1 Den. C. C. 505; T. & M. 192; 3 New Sess. Cas. 699; 13 Jur. 1010; 19 L. J., M. C. 12.

A., the servant of B., rendered an account to B. of 14l. 1s. 2d. as

B. gave A. a cheque for the amount. All that sum was so due except 7s., which A. kept when he got the cheque cashed, and paid the workmen the residue. In one count of an indictment for false pretences it was charged that, by this false pretence, A. obtained the check of B. with intent to defraud him of the same. It was objected that the intent was only to defraud B. of a part of the proceeds of the cheque. A. was convicted; and the judges held the conviction right, and that the evidence supported the count. Reg. v. Leonard, 3 Cox, C. C. 284; 1 Den. C. C. 304.

An indictment alleging that the defendant falsely pretended a sum of money, a parcel of a certain larger sum, was due and owing to him for work which he had executed for the prosecutors, is not an allegation of a false pretence of an existing fact, as the allegation might be satisfied by evidence of a mere matter of opinion, either as regarded fact or law; and therefore the indictment is bad. Reg. v. Oates, Dears. C. C. 459; 1 Jur., N. S. 429; 24 L. J., M. C. 123; 6 Cox, C. C. 540.

An indictment for obtaining goods by false pretences must state the false pretences with certainty, so that it may clearly appear that there was a false pretence of an ex-Reg. v. Henshaw, L. isting fact. & C. 444; 9 Cox, C. C. 472; 10 Jur., N. S. 595; 33 L. J., M. C. 132; 12 W. R. 751; 10 L. T., N. S. 428.

In an indictment alleging that the prisoner pretended to A.'s representative that she was to give him 20s. for B., and that A was going to allow B. 16s. per week, it does not sufficiently appear that there was any false pretence of an existing fact. Ib.

An indictment alleging that the prisoners falsely pretended to A. that some soot which they then delivered to A. weighed one ton and

weigh one ton seventeen cwt., but only weighed one ton and thirteen cwt., they well knowing the pretence to be false, by means of which false pretence they obtained from A. 8s. with intent to defraud, is good, and sufficiently describes an indictable false pretence. Reg. v.Lee, L. & C. 418; 9 Cox, C. C. 460; 32 L. J., M. C. 129; 12 W. R. 750; 10 L. T., N. S. 348.

Upon a charge of obtaining money by false pretences, it is sufficient if the actual substantial pretence, which is the main inducement to part with the money, is alleged in the indictment, and proved; although it may be shewn by evidence that other matters not laid in the indictment in some measure operated upon the mind of the prosecutor as an inducement for him to part with his money. Reg. v. Hewgill, Dears. C. C. 351; 2 C. L. R. 600; 18 Jur. 158.

An indictment stating that, by the rules of a benefit society, every free member was entitled to 5l. on the death of his wife; and that the defendant falsely pretended that a paper which he produced was genuine, and contained a true account of his wife's death and burial, and that he further falsely pretended that he was entitled to 5l, from the society, by virtue of their rules, in consequence of the death of his wife, by means of which last-mentioned false pretence he obtained money, is good. Reg. v. Dent, 1 C. & K. 249 -Rolfe.

In an indictment, the pretence averred in some of the counts was that the prisoner falsely pretended that he having executed work, there was a sum of money due and owing to him for and on account of the work, being parcel of a larger sum claimed by him, whereas there was not then due and owing to him such money, being parcel of a larger sum. The false pretence averred in other counts was that the prisoner falsely seventeen cwt., whereas it did not | pretended that there was due and owing to him the whole amount of a sum of money for and on account of work executed by him, whereas there was not then due and owing to him the whole amount of such sum of money, but only a smaller sum:—Held, that the indictment was bad, inasmuch as a false pretence of an existing fact was not sufficiently alleged, and the averments would be proved by evidence of a mere wrongful overcharge. Reg. v. Oates, Dears. C. C. 459; 3 C. L. R. 661; 1 Jur., N. S. 429; 24 L. J., M. C. 123.

Allegation of Ownership of Property.]—An indictment for obtaining goods by means of false pretences, with intent to defraud a specified person, was bad, unless it stated whose property the goods were, and the defect was not aided after verdict, under 7 Geo. 4, c. 64, s. 21. Reg. v. Martin, 3 N. & P. 472; 8 A. & E. 481; 1 W. W. & H. 380; 2 Jur. 515; S. P. Reg. v. Norton, 8 C. & P. 196.

By 14 & 15 Vict. c. 100, s. 8, it shall be sufficient, in an indictment for obtaining property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person. By s. 25, every objection to an indictment for any formal defect apparent on the face thereof shall be taken before the jury shall be sworn:—Held, that sect. 8 did not render it unnecessary, in an indictment for obtaining money by false pretenses, to state whose property the money was, and that the omission was not a formal defect within sect. 25. Sill v. Reg. (in error), Dears. C. C. 132; 1 El. & Bl. 553; 17 Jur. 207; 22 L. J., M. C. 41. See 24 & 25 Vict. c. 96, s. 88, suprà, which renders an allegation of ownership unnecessary.

An indictment for false pretences, indictment in any way, is not adalleging that the prisoner obtained missible for the purpose of proving "from A, a cheque for the sum of the intent when he committed the

8l. 14s. 6d. of the monies of B." is a sufficient allegation that the cheque was the property of B. Reg. v. Godfrey, Dears. & B. C. C. 426; 4 Jur., N. S. 146; 27 L. J., M. C. 151; 7 Cox, C. C. 392.

In an indictment framed upon 8 & 9 Vict. c. 109, s. 17, charging that the prisoner, by fraud in playing at cards, did win from A. to B. a sum of money with intent to cheat A., it is not necessary to allege that the money won was the property of A. Reg. v. Moss, Dears. & B. C. C. 104; 2 Jur., N. S. 1196; 26 L. J., M. C. 9.

But an indictment for a conspiracy to obtain goods by false pretences, not stating whose property the goods were which it was the object of the conspiracy to obtain, is bad, in arrest of judgment. Reg. v. Parker, 2 G. & D. 709; 3 Q. B. 292.

#### 8. Evidence.

When a false pretence is contained in a letter which is lost, the prisoner may be convicted, if parol evidence is given of the contents of the letter. Rex v. Chadwick, 6 C. & P. 181—Tindal.

It is not necessary to prove the whole of the pretence charged; proof of part of the pretence, and that the money was obtained by such part, is sufficient. Rex v. Hill, R. & R. C. C. 190.

A. was indicted for obtaining a specific sum of money from B. by false pretences. He was employed by his master to take orders, but not to receive monies, and he was proved to have obtained the specific sum from B. by representing that he was authorised by his master to re-Evidence of his having, ceive it. within a week afterwards, obtained another sum from another person by a similar false pretence, such obtaining not being mentioned in the indictment in any way, is not admissible for the purpose of proving

acts charged in the indictment. Reg. v. Holt, 8 Cox, C. C. 411; Bell, C. C. 280; 30 L. J., M. C. 11; 6 Jur., N. S. 1121; 9 W. R. 74; 3 L. T., N. S. 310.

On an indictment for obtaining money by false pretences, if it is consistent with the evidence for the prosecution that the object of the false pretence was something else than the obtaining of the money, the charge will not be sustainable. Reg v. Stone, 1 F. & F. 311-Wil-

On an indictment against a defendant for obtaining goods by falsely pretending that he was of full age, a plea of infancy in an action brought against him is not admissible for the purpose of proving that he was a minor. Reg. v. Simmonds, 4 Cox, C. C. 277.

A prisoner was indicted for obtaining money from A. by false pretences. A.'s wife, by her husband's direction, delivered the money to the prisoner in the absence of her husband:—Held, that the money was obtained from A. Moseley, L. & C. 92; 9 Cox, C. C. 16; 7 Jur., N. S. 1108; 31 L. J., M. C. 24; 10 W. R. 61; 5 L. T., N. S. 328.

The money of a benefit society, whose rules were not inrolled, was kept in a box, of which E., one of the stewards, and two others had The prisoner, on the false keys. pretence that his wife was dead, which pretence he made to the clerk of the society in the hearing of E., obtained from the hands of E. out of the box 5l.:—Held, that, in an indictment, the pretence might be laid as made to E., and the money, the property of "E. and others," obtained from E. Reg. v. Dent, 1 C. & K. 249—Rolfe and Recorder Law.

Upon an indictment for obtaining money by false pretences, where it appears that statements were made on different occasions, it is a quesconnected as to form one continuing representation. Reg. v. Welman,Dears. C. C. 188; 17 Jur. 421; 22 L. J., M. C. 118; 6 Cox, C. C. 153.

A. was indicted for obtaining 2001. by falsely pretending that he had obtained from Lord S. the appointment of emigration agent, which was worth 600l. a year, and that, for 200l., he would give the prosecutor one-third of the agentship. The prosecutor proved, that he gave the money on this pretence, which was false; but that, before he parted with his money, the prisoner prevailed on him to execute a deed of copartnership with him, in which the consideration was stated to be 200*l*., and in which nothing was said of the agentship, or how it was obtained:—Held, that the putting in of this deed on the part of the prosecution did not exclude the parol evidence of the false pretences; and that, if the deed was a part of the scheme to effect the fraud, the prisoner should be found guilty. Reg v. Adamson, 1 C. & K. 192; 2 M. C. C. 286.

A. was charged with an attempt, by false pretences made to "John Baggally and others," fraudulently to obtain goods the property of the same parties. The evidence was, that the representation was made to John Baggally alone:—Held, that there was no variance, as the words "and others" might be rejected as surplusage. Reg. v. Kealey, T. & M. 405; 2 Den. C. C. 69; 15 Jur. 230; 20 L. J., M. C. 57; 5 Cox, C. C. 193.

On an indictment for obtaining money by a false pretence that a parcel contained all letters written by the prosecutrix to the prisoner, and which he had promised, in consideration of the money, to give up, the counsel for the prosecution is not bound to have the letters read. although the counsel for the prisoner may cross-examine as to the contion for the jury whether they are so | tents of any of them, and have any read for that purpose. Reg. v.Colucci, 3 F. & F. 104.

An indictment alleged that the prisoner obtained goods by falsely pretending that a person who lived in a large house down the street, and had had a daughter married some time back, had asked him to The prisoner procure the goods. made the statement alleged to a shopkeeper in a village, and thereby obtained the goods; but the only evidence to disprove the truth of the statement was that of a lady who lived in the village, whose daughter had been married a year previously, who stated that she had not sent the prisoner to the prosecutor's shop for the goods. The jury having found him guilty:-Held, that the conviction might be sustained. Reg. v. Burnsides, 6 Jur., N. S. 1310; 30 L. J., M. C. 42; 9 W. R. 37; 3 L. T., N. S. 311; Bell, C. C. 282; 8 Cox, C. C. 370.

B. was charged in a first count with obtaining money from the trustees of a savings bank by falsely pretending that a document presented to the bank by the wife of D. had been filled up by the authority of D.; and in a second count, he was charged with conspiring with the wife of D. to cheat the bank. The evidence of D. was received, in proof of the first count, to show that he had given no authority to fill up the document or to withdraw the de-The jury found him guilty posit. on the first count, and not guilty on the second count:—Held, first, that the evidence of D. was properly received in proof of the first count, his wife not being indicted, although she was alleged to be one of the parties to the conspiracy in the second count. Reg. v. Halliday, Bell, C. C. 257; 29 L. J., M. C. 148; 8 Cox, C. C. 298.

Held, secondly, that finding him guilty on the first count was consistent with finding him not guilty ne second count. Ib. | with them Fish. Dig.—12. Digitized by Microsoft® on the second count.

9. *Trial*.

Where a prisoner, in a begging letter, which contained false pretences, and was addressed to the prosecutor, who resided in Middlesex, requesting him to put a letter, containing a post-office order for money, in a post-office in Middlesex, to be forwarded to the prisoner's address in Kent:-Held, that the venue was rightly laid in Middlesex, as the prisoner, by directing the money order to be sent by post, constituted the post-master in Middlesex his agent to receive it there for him; and that, consequently, there was a receipt of the money order by the prisoner within the county of Middlesex. Reg. v. Jones, 1 Den. C. C. 551; 4 New Sess. Cas. 353; 14 Jur. 533; 19 L. J., M. C. 162.

The prisoner wrote and posted in a county a letter containing a false pretence to the prosecutor, who received it in a borough. The prosecutor in the borough posted to the prisoner in the county a letter containing the money obtained by the false pretence, and which the prisoner received in the county:—Held, that under 7 Geo. 4, c. 64, s. 12, which authorises the trial in any jurisdiction where the offence is begun or completed, the prisoner might be tried for the offence of obtaining the money by false pretence at the borough quarter sessions; part of the offence being the making the false pretence, and the false pretence being made to the prosecutor in the borough, where the letter containing the false pretence was delivered to him by the postoffice authorities, whom the prisoner made his agents for that purpose. Reg. v. Leech, Dears. C. C. 642; 2 Jur., N. S. 428; 25 L. J., M. C. 77; 7 Cox, C. C. 100.

One who obtains goods by false pretences in one county, and after- \* wards brings them into another county, where he is apprehended with them, cannot be indicted for

the offence in the county, but must be indicted in the county where the goods were obtained. Reg. v. Stanbury, 9 Cox, C. C. 94; L. & C. 128; 8 Jur., N. S. 84; 31 L. J., M. C. 88; 10 W. R. 236; 5 L. T., N. S. 686.

On an indictment for obtaining money by a false pretence which was alleged to have been by sending a certain false return of fees to the commissioners of the Treasury, it appearing that the return was received by them in Westminster, with a letter dated Northampton, and an affidavit sworn there; and that they, on the faith of it, drew up a minute, which operated as an authority to the paymaster-general to pay a certain amount to the prisoner (as compensation under 7 & 8 Vict. c. 96) at Westminster, the venue laid being Northamptonshire: -Held, that there was reasonable evidence that the false representation was forwarded from Northampton; that it was, if false and fraudulent, a false pretence within the statute; that in effect the money was obtained by means of the minute, being a mere matter of regulation, and not a judicial proceeding; and that, therefore, the venue was right, and the indictment was supported. Reg. v. Cooke, 1 F. & F. 64—Coleridge.

Where a misdemeanor consists of different parts, so much of the charge as amounts to a misdemeanor in law must be proved in the county in which the venue is laid. Pearson v. M'Gowran, 3 B. & C. 700; 5 D. & R. 616.

# 10. Receiving Property obtained by False Pretences.

On the trial of an indictment for receiving goods, knowing them to have been obtained by false pretences, if the jury is not satisfied that the prisoner knew that the goods were obtained by false pretences, the receiver is entitled to be acquitted. Reg. v. Rymes, 3 C. & K. 327—Williams.

XVI. FORCIBLE ENTRY AND DE-TAINER.

5 R. 2, st. 1, c. 8; 15 R. 2, c. 2; 8 Hen. 6, c. 9; 31 Eliz. c. 11; 21 Jac. 1, c. 15.

Indictment.]—An indictment at common law, charging the defendants with having unlawfully, and with a strong hand, entered the prosecutor's mill, and expelled him from the possession, is good. Rex v. Wilson, 8 T. R. 357.

To constitute a forcible entry, or a forcible detainer, it is not necessary that any one should be assaulted, but only that the entry or the detainer should be with such numbers of persons, and show of force, as is calculated to deter the rightful owner from sending the persons away, and resuming his own possession. Milner v. Maclean, 2 C. & P. 17—Abbott.

Upon the trial of an indictment for a forcible entry or a detainer, the party dispossessed was not a competent witness for the prosecution, before 6 & 7 Vict. c. 85, and 14 & 15 Vict. c. 99. Rex v. Williams, 4 M. & R. 471; 9 B. & C. 549; S. P., Rex v. Beavan, 242.

On the trial of such an indictment, the defendant cannot impeach the title of the party dispossessed. *Ib.* 

A person having no possession or title to premises, but fraudulently pretending to have such title, and so allowed by the servant of the true owner to enter, does not thereby acquire possession, but may be forcibly expelled by him on discovery of the fraud; and if in such a case assaults are committed in consequence, the question for the jury will be, whether there has been an excess of violence. A subsequent attempt by force to re-enter, and so causing an affray: - Held, an indictable offence, for which the party might be given in charge. Collins\* v. Thomas, 1 F. & F. 416—Campbell.

Semble, in an indictment for forcible entry, it is not necessary to allege the prosecutor's title to the property, it is sufficient to state the possession; but if the title is stated it need not be proved. Reg. v. Child, 2 Cox, C. C. 102—Rolfe.

An indictment for a forcible entry cannot be supported by evidence of a mere trespass; but there must be proof of such force, or at least such shew of force, as is calculated to prevent any resistance. Rex. v. Smyth, 5 C. & P. 201; 1 M.

& Rob. 156—Tenterden.

A wife separated from her husband took a house, of which the husband, with the landlord's consent, obtained possession. Semble, that if the wife came with others, and made a forcible entry into this house, she might be convicted on an indictment for forcible entry, stating it to be the house of the husband. *Ib*.

A constable entered a house with a warrant in his hand, and searched the house; and for such entering and searching was indicted for foreible entry:—Held, that his counsel might ask the witnesses for the prosecution what the constable said, at the time, as to whom he was

searching for. 1b.

If a tenant of a house, after regular notice to quit, abandons it, and locks it up, leaving some articles of furniture in it, and the landlord breaks it open and takes possession, the tenant cannot maintain trespass; his remedy, if any, is by indictment for forcible entry. Turner v. Meymott, 7 Moore, 574; 1 Bing, 158. See Hillary v. Gay, 6 C. &. P. 284; Newton v. Harland, 1 Scott, N. R. 474; 1 M. & G. 644; Burling v. Read, 11 Q. B. 904; Pollen v. Brewer, 7 C. B., N. S. 371.

A person using land as a garden for more than twenty years, under permission from the owner to do so, in order to keep it from trespassers, the owner from time to time coming on the land and giving direc-

tions as to cutting the trees:—Held, that he had not got a title so as to enable him to sue a claimant under the owner for a forcible entry. Allen v. England, 3 F. & F. 49—Erle.

The court refused to grant a mandamus to compel magistrates to hear a complaint and act summarily under the statutes relating to forcible entry and detainer. Davy, Ex parte, 2 D., N. S. 24—B. C.—Wightman.

Conviction by Justices.]—The 8 Hen. 6, c. 9, was intended to give a summary jurisdiction in case of forcible detainer, after an unlawful entry; and a conviction by justices on that statute, merely stating an entry and a forcible detainer, is insufficient. Rex v. Oakley, 4 B. & Ad. 307; 1 N. & M. 58.

The 15 R. 2, c. 2, gave justices a summary jurisdiction to convict, on their own view, for a forcible detainer after a forcible entry. *Ib*.

In a conviction under 8 Hen. 6, c. 9, for a forcible detainer, it must appear on the face of the conviction that there was an unlawful entry. Rex v. Wilson, 5 N. & M. 164; 3 A. & E. 817; 1 H. & W. 387.

A conviction under a forcible detainer, on the view merely of the justices, without any evidence of an unlawful entry, is bad, even though information and complaint of an unlawful expulsion are stated. *Ib*.

In a conviction for a foreible detainer, under 8 Hen. 6, c. 9, where the magistrates proceed upon view, it is not necessary to set out the particular facts presented to their view. Rex v. Wilson, 3 N. & M. 753; 1 A. & E. 627.

At the time of the conviction, the defendant tendered to the justices a traverse of the force complained of; and a few days after an inquisition was held before the magistrates, for the purpose of trying the alleged force by a jury, who, after hearing evidence adduced by both parties, found the

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defendant guilty; and the magistrates then gave restitution. turn was made to the court, on certiorari, of the conviction and inquisition. The latter was then entitled an inquisition, by the oaths of twelve &c., before &c., who say upon their oaths that &c.; stating an unlawful entry and detainer, but not reciting any complaints made by the prosecutor:—Held, that the inquisition was founded on the conviction, and could not be sustained, the conviction being void; and that the inquisition, even if looked at alone, was bad, as it did not state any complaint, nor by what authority the jury was summoned. Ib.

In order to justify a conviction by justices, under 15 Rich. 2, c. 2, and 8 Hen. 6, c. 9, it must be proved before them that there was, as well an unlawful entry on the premises as a forcible detainer. Attwood v. Joliffe, 3 New Sess. Cas. 116—Q. B.

Where a conviction stated that justices had convicted A. of forcible detainer upon their own view, and that afterwards a complaint was made to the justices that A. forcibly entered the premises, and that notice of such complaint was given to A., who received the notice, but said nothing, and then went on to allege that the justices received evidence on oath of the unlawful entry:—Held, that the conviction was bad, for not shewing that A. had been summoned to answer the charge of the unlawful entry, or that he had any opportunity afforded him of defending himself against such charge. Ib.

V. having been in possession of a house from May to October, the defendants called there, and, insisting that V. had no title, proceeded to take the keys out of the room doors. Upon their doing so, V. gave them into custody for stealing the keys; but the magistrate refused to detain them. They then returned to the house, and having procured a sledge-hammer, forced for a for a

the inner door of the hall, and some having entered that way, and some by a staircase window, overpowering the prosecutor's opposi-tion, and furnished with a hatchet and other weapons, after a struggle which caused a disorderly crowd to assemble, they ejected the prosecutor and his servants. From the commencement of the proceedings till the conclusion, a female servant of the prosecutors was in the kitchen:—Held, assuming the title of the prosecutor to have been bad, and that the defendants had acted by the orders of those who had a good title to the premises, that the evidence was sufficient to support a conviction of the defendants for a forcible entry and riot. Req. v. Studd, 14 W. R. 806; 14 L. T., N. S. 633—C. C. R.

Restitution.]—An averment in an indictment for a forcible entry that the prosecutor was seised, is sufficient to found an application for a writ of restitution; and it needs not be shewn by the prosecutor that he still continued to be seised. Rex v. Dillon, 2 Chit. 314.

A judge at the assizes may, in his discretion, refuse to award restitution, after an indictment for forcible entry and detainer has been found by the grand jury, and the court has no power to review his decision. Reg. v. Harland, 1 P. & D. 93; 8 A. & E. 826; 2 Lewin, C. C. 171; 2 M. & Rob. 141.

In order to authorise a justice to award restitution pursuant to an inquisition taken under 8 Hen. 6, c. 9, for a forcible entry, the inquisition should set forth the estate possessed by the party in the property disputed. Reg. v. Bowser, 8 D. P. C. 128; 1 W. W. & H. 345.

Where the indictment is brought before the Queen's Bench by certiorari, that court is bound, upon conviction, to award restitution. Rex v. Williams, 4 M. & R. 471; 9 B. & C. 549.

So the court is bound to award a restitution, as a consequence of quashing a conviction for an unlawful detainer under 8 Hen. 6, c. 9, which is bad, without inquiring into the legal or equitable claim of the respective parties. Rex v. Wilson, 6 N. & M. 625; 3 A. & E. 817; 2 H. & W. 225.

For the mode of proceeding to obtain restitution on application to a judge, after indictment found, but before trial, see Rex v. Hake, 4 M. & R. 483.

An indictment charged that the defendants into one messuage, then and there being in the possession of W. P., he W. P. then and there being also seised thereof, with force of of arms, did enter, and W. P., from the peaceable possession with force and arms, did put out. After a conviction of the defendants:—Held, that this was a sufficient averment of the present seisin of W. P. to warrant the court in awarding a writ of restitution. Rex v. Hoare, 6 M. & S. 266.

#### XVII. FORGERY.

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## 1 Statutes.

By 24 & 25 Vict. c. 95, and 11 Geo. 4 & 1 Will. 4, c. 66, the following statutes as to forgery are either wholly or partially repealed, as un $der\ mentioned,\ viz.:$ 

Statutes wholly repealed. \—5 Eliz. c. 14; 21 Jac. 1, c. 26; 7 Geo. 2, c. 22; 13 Geo. 3, c. 79; 18 Geo. 3, c. 18; 33 Geo. 3, c. 30; 37 Geo. 3, c. 122; 41 Geo. 3 (U. K.), c. 39; 41 Geo. 3, c. 57; 45 Geo. 3, c. 89; 52 Geo. 3, c. 138; 2 & 3 Will. 4, c. 123; 3 & 4 Will. 4, c. 44; 7 Will. 4 & 1 Vict. c. 84.

Statutes partially repealed.]-25 Edw. 3, stat. 5, c. 2; (the statute of treasons only repealed as to the seals); 1 Mar. stat. 2, c. 6; (this statute is wholly repealed by 2 Will. 4, c. 34); 4 Will. & M. c. 4; 8 & 9 Will. 3, c. 20; 7 Ann. c. 21; 8 Geo. 1, c. 22; 12 Geo. 1, c. 31; 2 Geo. 2, c. 25; 15 Geo. 2, c. 13; 31 Geo. 2, c. 22; 4 Geo. 3, c. 25; 27 Geo. 3, c. 43; 43 Geo. 3, c. 139; 48 Geo. 3, c. 1; 52 Geo. 3, c. 146; 4 Geo. 4, c.

11 Geo. 4 & 1 Will. 4, c. 66, is wholly repealed, except sect. 21, by

In force.]—24 & 25 Vict. c. 98, "is the consolidating statute of the "law of England and Ireland, re-"lating to indictable offences by "forgery, in force, which, by s. "56, commenced and took effect "on the 1st of November, 1861, "and, by s. 55, nothing in the statute "contained extends to Scotland ex-"cept expressly therein provided."

### 2. What is Forgery.

Forgery is the false making of an instrument, which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud any person or persons. Rex v. Jones, 2 East, P. C. 991—Eyre.

In forgery there need not be an exact resemblance; it is sufficient if the instrument is prima facie fitted to pass for a true instrument. Rev. v. Elliot, 1 Leach, C. C. 175, 179; 2 East, P. C. 951; S. P., Reg. v. Mahoney, 6 Cox, C. C. 487.

To make a mark in the name of another person, with intent to defraud the person whose name is assumed, is forgery. Rev v. Dunn, 1 Leach, C. C. 57; 2 East, P. C. 962.

If a person authorises another to sign a note in his name, dated at a particular place, and made payable at a banker's; and the person in whose name it is drawn represents it to be the name of another person, with intent to defraud, and no such person as the note and the representation import exists, this is forgery, for it is a false making of an instrument in the name of a non-existing person. Rex v. Parkes, 2 Leach, C. C. 775; 2 East, P. C. 963, 992.

It is forgery to alter a document which a party has previously forged himself; and he may be convicted of forging and uttering it in the state to which it was so altered. Rex v. Kinder, 2 East, P. C. 856.

Where a party receives a blank on a cheque, signed with directions to tents fill in a certain amount, and he 461.

fraudulently fills in a larger amount, and devotes the proceeds of the check to other purposes, he is guilty of forgery. *Reg.* v. *Wilson*, 2 Cox, C. C. 426; 1 Den. C. C. 284; 17 L. J., M. C. 82.

So filling in a form of cheque already signed, with blanks left in it for the sum, without authority, is forgery. Flower v. Shaw, 2 C. &

K. 703—Wilde.

A person may be convicted of forging with intent to defraud, although the note was found in his custody when apprehended, and never, in fact, uttered by him. Rex v. Crocker, 2 Leach, C. C. 987; 2 N. R. 87; R. & R. C. C. 97.

Forging an order from one to charge certain goods contained in a schedule to his account, and to appropriate part of the proceeds to the forger's own use, done with intent to defraud the principal, is forgery at common law, though the fraud is not effected. Rex v. Ward, 2 East, P. C. 861.

A person who has for many years been known by a name which was not his own, and afterwards assumes his real name, and in that name draws a bill of exchange, is not guilty of forgery, though the bill was drawn for the purposes of fraud. Rex v. Aickles, I Leach, C. C. 438; 2 East, P. C. 968.

Assuming and using a fictitious name, though for the purposes of concealment and fraud, will not amount to forgery, if it was not for that very fraud, or system of fraud, of which the forgery forms a part. Rex v. Bontien, R. & R. C. C. 260.

It is not forgery fraudulently to procure a party's signature to a document, the contents of which have been altered without his knowledge. Reg. v. Chadwick, 2 M. & Rob. 545—Rolfe.

Or forgery fraudulently to induce a person to execute an instrument on a misrepresentation of its contents. Reg. v. Collins, 2 M. & Rob. 461.

The forgery of a railway pass to allow the bearer to pass free on a railway, is a forgery at common law; but the uttering of it per se is not a misdemeanor. Reg. v. Boult, 2 C. & K. 604—Cresswell.

Uttering a forged instrument, the forgery of which is only a forgery at common law, is no offence, unless some fraud is actually perpetrated by it; and where in such a case the indictment contained some counts for forging the instrument and others for uttering it, and the defendant was acquitted on the counts for the forgery and convicted on the counts for the uttering, judgment was arrested. *Ib*.

To forge a certificate of service, sobriety and good conduct at sea, with intent to deceive and defraud, is an offence indictable at common law. Reg. v. Toshack, T. & M. 207; 1 Den. C. C. 592; 13 Jur. 1011; 4

Cox, C. C. 38.

A forgery must be of some document or writing; therefore the painting an artist's name in the corner of a picture, in order to pass it off as an original picture by that artist is not a forgery. Reg. v. Closs, Dears. & B. C. C. 460; 3 Jur., N. S. 1309; 27 L. J., M. C. 54; 7 Cox, C. C. 494.

Forging testimonials as to his character, whereby he obtained a situation as a police constable, is a forgery at common law. Reg. v. Moah, Dears. & B. C. C. 550; 4 Jur., N. S. 464; 27 L. J., M. C. 205;

7 Cox, C. C. 503.

B. was in the habit of selling certain powders, wrapped in printed papers, describing their use, and having a printed signature at the end. The prisoner had a number of wrappers printed in imitation of B.'s, so as to deceive persons of ordinary observation, and to make them believe them to be B.'s; he then sold spurious powders, wrapped up in these papers, as B.'s powders; and all this was done with intent to defraud:—Held, that there was no

forgery. Reg. v. Smith, Dears. & B. C. C. 566; 4 Jur., N. S. 1003; 27 L. J., M. C. 225.

The 11 & 12 Vict. c. 63, directs that the votes for the election of members of local boards of health shall be given by means of voting papers, and by s. 25, "if any voter cannot write, he shall affix his mark at the foot of a voting paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote." The defendants, who took an active part on behalf of some of the candidates, went to the houses of voters who were marksmen, to assist in filling up the voting papers, and having obtained the express or implied consent of voters or members of their families, filled up the papers with the proper names and marks of the voters, and put their own names as attesting witnesses without obtaining the actual signatures or marks of the parties themselves:—Held, that this did not constitute the offence of forgery at common law. Reg. v. Hartshorn, 6 Cox, C. C. 395—Crompton.

A man may be convicted of forging and uttering an instrument, with intent to defraud, though there is no person in a situation to be defrauded by his act. Reg. v. Nash, 2 Den. C. C. 493; 16 Jur. 553; 21

L. J., M. C. 147—Maule.

Making a false entry in what purports to be a banker's pass-book, with intent to defraud, is a forgery. Reg. v. Smith, L. & C. 168.

But where a paying teller of a bank falsely and with intent to defraud, enters in the proof book of the bank, kept by him, a certain sum of money, as assets of the bank, whereas the assets do not amount to that sum, he is not guilty of forgery by the law of England. Windsor, In re, 6 B. & S. 522; 10 Cox, C. C. 118; 34 L. J., M. C. 163; 11 Jur., N. S.

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807; 13 W. R. 653; 12 L. T., N. S. 307.

A person was indicted for forging a testimonial to his character as a schoolmaster, and the indictment also charged him with having uttered the forged document. The jury acquitted him of the forgery, but found him guilty of the uttering with intent to obtain the emoluments of the place of schoolmaster, and to deceive the prosecutor:-Held, that this finding of the jury amounted to an offence at common law, of which the prisoner was Reg. v. Sharproperly convicted. man, Dears. C. C. 285; 18 Jur. 157; 23 L. J., M. C. 51; 6 Cox, C. C. 312.

Where a person had made alterations in a diploma of the College of Surgeons, to make it appear to be a document issued by the college to him, and had hung it up in his house, and showed it to certain persons, it was found, by the case reserved for the court, that he had no intent, in forging, or in the uttering and publishing, to commit any particular fraud or specific wrong to any individual: -Held, that he could not be convicted of forgery or of uttering. Reg. v. Hodgson, Dears. & B. C. C. 3; 2 Jur., N. S. 453; 25 L. J., M. C. 78; 7 Cox, C. C. 122.

A master of a ship having made and signed a report of a seaman's character upon his discharge, in the form sanctioned by the Board of Trade, the shipping-master gave The seaman the seaman a copy. went to the prisoner, who, for 2s. 6d., made and delivered to him a facsimile of the genuine copy of the report, except that the letter "G.," which signified "good," was substituted for the letter "M., which signified "middling":-Held, that the prisoner was guilty of an offence within 17 & 18 Vict. c. 104, s. 176. Reg. v. Wilson, Dears. & B. C. C. 558; 4 Jur., N. S. 670; 27 L. J., M. C. 230.

A man was indicted for forging a banker's pass book, with intent to

defraud. He was treasurer to a trades union, which was an illegal society. It was contended that such a society, having no legal existence, could possess no funds, and, therefore, could not be defrauded:—Held, that the objection of illegality was applicable only to the summary proceedings before magistrates provided by the Friendly Societies Act; but did not extend to deprive the society of its remedy by indictment. Reg. v. Dodd, 18 L. T., N. S. 89— Lush. See Reg. v. Stainer, 1 L. R., C. C. 230; 39 L. J., M. C. 54, and 32 & 33 Vict. c. 61.

#### 3. The Instrument.

The invalidity of an instrument must appear upon the face of it, in order to found an objection to an indictment for forgery. Rex v. MacIntosh, 2 East, P. C. 942; 2 Leach, C. C. 883.

Where the instrument forged is legal on the face of it, the prisoner may be legally convicted, although it appears from extraneous evidence that the forged instrument would not have been valid in law. Reg. v. Pike, 2 M. C. C. 70; 3 Jur. 27.

## (a) Bank Notes.

Forging, altering or uttering. ]— By 24 & 25 Vict. c. 98, s. 12, "who-"soever shall forge or alter, or "shall offer, utter, dispose of or put " off, knowing the same to be forged "or altered, any note or bill of "exchange of the Bank or England "or of the Bank of Ireland, or of "any other body corporate, compa-"ny or person carrying on the busi-" ness of bankers, commonly called a "bank-note, a bank bill of ex-"change or a bank post bill, or "any indorsement on or assignment "of any bank-note, bank bill of ex-"change or bank post bill, with "intent to defraud, shall be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept in " penal servitude for life, or for any

"term not less than five years (27 & "28 Vict. c. 47), or to be imprison-"ed for any term not exceeding "two years, with or without hard "labour, and with or without soli-"tary confinement."

By s. 13, "whosoever, without "lawful authority or excuse (the "proof whereof shall lie on the par-"ty accused), shall purchase or re-"ceive from any other person, or "have in his custody or possession, "any forged bank-note, bank bill "of exchange or bank post bill, or " blank bank-note, blank bank bill "of exchange or blank bank post "bill, knowing the same to be for-"ged, shall be guilty of felony, "and, being convicted thereof, "shall be liable, at the discretion "of the court, to be kept in penal "servitude for any term not exceed-"ing fourteen years, and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour."

Giving to a confederate a forged bank-note, that he may utter it, is a disposing and putting away thereof. Rex v. Palmer, R. & R. C. C. 72; 1 N. R. 96; 2 Leach, C. C. 978; And see Brooks v. Warwick, 2 Stark, 389.

The changing the figure 2 into the figure 5, in a bank-note (220l. to 250l.), is forging and counterfeiting a bank-note. Rex v. Dawson, 1 Stra. 19; 2 East, P. C. 978.

A forged bank-note, although the word "pounds" is omitted in the body of it, and there is no watermark in the paper, is a counterfeit note for the payment of money. Rex v. Eliot, 2 East, P. C. 951. See Sanderson v. Piper, 7 Scott, 408; 5 Bing. N. C. 425; 2 Arn. 58; 3 Jur. 773.

So, the altering a banker's one pound note, by substituting the word "ten" for the word "one," is a forgery, although it thereby purports to be a note for ten

Fish. Dig.—13.

"pound," and not pounds. Rex v. Post, R. & R. C. C. 101.

Expunging, by a certain liquor, a notification of payment of part of the contents of a bank bill, written on the face of it, would sustain an indictment on 8 & 9 Will. 3, c. 20, s. 36, for rasing out an indorsement on such bill. Rex v. Bigg, 2 East, P. C. 882; 3 P. Wms. 419.

The counterfeit making of any part of a genuine note, which may give it a greater currency, is forgery; therefore, if a note is made payable at a country banker's, or at his banker's in London, who fails, it is forgery to alter the name of that London banker to the name of another London banker, with whom the maker makes his other notes payable after the failure of the Rex v. Treble, 2 Taunt. 328; 2 Leach, C. C. 1040; R. & R. C. C.

Engraving Plates for Notes of the Bank of England or of Ireland.]— By 24 & 25 Vict. c. 98, s. 14, "who-"soever, without lawful authority " or excuse (the proof whereof shall "lie on the party accused), shall " make or use, or knowingly have in "his custody or possession, any frame, mould or instrument for "the making of paper with the "words 'Bank of England' "'Bank of Ireland,' or any part "of such words intended to resem-"ble and pass for the same, visible "in the substance of the paper, or "for the making of paper with "curved or waving bar lines, or "with the laying wire lines thereof "in a waving or curved shape, or "with any number, sum or amount "expressed in a word or words in "roman letters, visible in the sub-"stance of the paper, or with any "device or distinction peculiar to, "and appearing in the substance of "the paper used by, the Banks of "England and Ireland respectively "for any notes, bills of exchange or

"bank post bills of such banks re-"spectively, or shall make, use, "sell, expose to sale, utter or dis-"pose of, or knowingly have in his "custody or possession, any paper whatsoever with the words 'Bank "of England' or 'Bank of Ireland,' "or any part of such words intend-"ed to resemble and pass for the "same, visible in the substance of "the paper, or any paper with "curved or waving bar lines, or "with the laying wire lines thereof "in a waving or curved shape, or "with any number, sum or amount "expressed in a word or words in "roman letters, appearing visible "in the substance of the paper, or " with any device or distinction pe-"culiar to, and appearing in the "substance of the paper used by, "the Banks of England and Ireland "respectively, for any notes, bills " of exchange or bank post bills of " such banks respectively, or shall by "any art or contrivance cause the "words 'Bank of England' or 'Bank "of Ireland," or any part of such "words intended to resemble and "pass for the same, or any device " or distinction peculiar to, and ap-" pearing in the substance of the paper used by, the Banks of Eng-"land and Ireland respectively for "any notes, bills of exchange or "bank post bills of such banks re-"spectively, to appear visible in "the substance of any paper, or "shall cause the numerical sum or "amount of any bank-note, bank "bill of exchange or bank post bill, "blank bank-note, blank bank bill "of exchange or blank bank post "bill, in a word or words in roman "letters, to appear visible in the "substance of the paper whereon "the same shall be written "or printed, shall be guilty of fel-"ony, and, being convicted thereof, "shall be liable, at the discretion "of the court, to be kept in penal " servitude for any term not exceed-"ing fourteen years, and not less "than five years (27 & 28 Vict. c.

"47), or to be imprisoned for any term not exceeding two years, with or without hard labour."

By s. 15, "nothing in the last "preceding section contained shall "prevent any person from issuing "any bill of exchange or promissonote having the "thereof expressed in guineas, or in "a numerical figure or figures de-"noting the amount thereof in "pounds sterling, appearing visible "in the substance of the paper upon "which the same shall be written "or printed, nor shall prevent any " person from making, using or sell-"ing any paper having waving or " curved lines or any other devices in "the nature of water-marks visible " in the substance of the paper, not "being bar lines or laying wire "lines, provided the same are not "so contrived as to form the "groundwork or texture of the pa-"per, or to resemble the waving or "curved laying wire lines or bar "lines of the water-marks of the "paper used by the banks of Eng-"land and Ireland respectively."

Engraving Bank Notes or Bills on Plates.]—By 24 & 25 Vict. c. 98, s. 16, "whosoever, without law-"ful authority or excuse (the proof "whereof shall lie on the party ac-"cused), shall engrave or in any-"wise make upon any plate what-"soever, or upon any wood, stone " or other material, any promissory "note, bill of exchange, or bank " post bill, or part of a promissory "note, bill of exchange, or bank "post bill, purporting to be a bank-note, bank bill of exchange or " bank post bill of the Bank of Eng-"land or of the Bank of Ireland, "or of any other body corporate, " company or person carrying on the "business of bankers, or to be a " blank bank-note, blank promissory "note, blank bill of exchange, or " blank bank post bill of the Bank of " England or of the Bank of Ireland, "or of any such other body corpor-

"ate, company or person as afore-"said, or to be a part of a bank-note, "promissory note, bank bill of ex-"change or bank post bill of the "Bank of England or of the Bank " of Ireland, or of any such other "body corporate, company or per-"son as aforesaid, or any name, "word or character resembling or "apparently intended to resemble "any subscription to any bill of ex-"change or promissory note issued "by the Bank of England or the "Bank of Ireland, or by any such "other body corporate, company or "sperson aforesaid, or shall use any "such plate, wood, stone or other "material, or any other instrument " or device, for the making or print-"ing any bank-note, bank bill of "exchange or bank post bill, or " blank bank-note, blank bank bill "of exchange, or blank bank post "bill, or part of a bank-note, bank "bill of exchange or bank post bill, " or knowingly have in his custody "or possession any such plate, wood, "stone or other material, or any " such instrument or device, or shall "knowingly offer, utter, dispose of "or put off, or have in his custody "or possession, any paper upon "which any blank bank-note, blank "bank bill of exchange or blank "bank post bill of the Bank of Eng-"land or of the Bank of Ireland, or "of any such other body corpor-"ate, company or person as afore-"said, or part of a bank-note, bank " bill of exchange or bank post bill, "or any name, word or character "resembling or apparently intended "to resemble any such subscription, "shall be made or printed, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding fourteen years, "and not less than five years (27 & "28 Viet. c. 47), or to be impris-"oned for any term not exceeding "two years, with or without hard "labour, and with or without soli-

"tary confinement." (Former statute, 11 Geo. 4 & 1 Will. 4, c. 66, s. 18.)

A. cut out the centre part of a onepound note of a banking company, and took the ornamental border to an engraver, representing that he wanted to have a plate made to this border, intending to fill up the centre with the title of some oil or cosmetic, of which the firm in whose employ he represented himself to be were the vendors. A plate was accordingly made and delivered to him, when he was immediately apprehended with the plate in his possession, and was tried and convicted upon an indictment framed upon the 11 Geo. 4 & 1 Will. 4, c. 66, s. 18:—Held, that by the word "note" is not meant merely the obligation or writing, but the whole paper or thing which circulates as a note; and therefore the border or ornamental margin is part of a note within the meaning of the statute. Reg. v. Keith, Dears. C. C. 486; 1 Jur., N. S. 454; 24 L. J., M. C. 110; 3 C. L. R. 692; 6 Cox, C. C. 533.

In order to ascertain whether that which was engraved on the plate purported to be part of the note, extrinsic evidence is admissible, and for that purpose the jury may compare the plate with a genuine note of the company. *Ib*.

By 24 & 25 Vict. c. 98, s. 17, "whosoever, without lawful author-"ity or excuse (the proof whereof "shall lie on the party accused), "shall engrave or in anywise make " upon any plate whatsoever, or upon "any wood, stone or other material, "any word, number, figure, device, "character or ornament, the im-"pression taken from which shall "resemble or apparently be intend-" ed to resemble any part of a bank-"note, bank bill of exchange or " bank post bill of the Bank of Eng-" land or of the Bank of Ireland, or " of any other body corporate, com-"pany or person carrying on the " business of bankers, or shall use, or

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"knowingly have in his custody or | "possession, any such plate, wood, "stone or other material, or any "other instrument or device for the "impressing, or making upon any " paper or other material any word, "number, figure, character or orna-"ment which shall resemble or ap-" parently be intended to resemble "any part of a bank-note, bank bill " of exchange or bank post bill of "the Bank of England or of the "Bank of Ireland, or of any such "other body corporate, company or " person as aforesaid, or shall know-"ingly offer, utter, dispose of or put "off, or have in his custody or pos-"session, any paper or other ma-"terial upon which there shall be "an impression of any such matter "as aforesaid, shall be guilty of fel-" ony, and, being convicted thereof, "shall be liable, at the discretion of "the court, to be kept in penal ser-" vitude for any term not exceeding "fourteen years, and not less than "five years (27 & 28 Vict. c. 47), "or to be imprisoned for any term "not exceeding two years, with or " without hard labour, and with or "without solitary confinement.

Making or Imitating Bank Paper. -By s. 18, "whosoever, without "lawful authority or excuse (the " proof whereof shall lie on the party "accused), shall make or use any "frame, mould or instrument for "the manufacture of paper, with "the name or firm of any body cor-"porate, company or person carry-"ing on the business of bankers " (other than and except the Banks "of England and Ireland respect-"ively), appearing visible in the "substance of the paper, or know-"ingly have in his custody or pos-"session any such frame, mould or "instrument, or make, use, sell, ex-" pose to sale, utter or dispose of, or "knowingly have in his custody or " possession, any paper in the sub-" stance in which the name or firm " of any such body corporate, com-

"pany or person shall appear visi-"ble, or by any art or contrivance "cause the name or firm of any " such body corporate, company or "person to appear visible, in the " substance of the paper upon which "the same shall be written or print-"ed, shall be guilty of felony, and, "being convicted thereof, shall be " liable, at the discretion of the court, "to be kept in penal servitude for "any term not exceeding fourteen "years, and not less than five years "(27 & 28 Vict. c. 47), or to be "imprisoned for any term not ex-"ceeding two years, with or with-" out hard labour, and with or with-" out solitary confinement."

Engraving Plates for Foreign Bills or Notes. ]-By s. 19, "whoso-"ever, without lawful authority or "excuse (the proof whereof shall "lie on the party accused), shall "engrave or in anywise make upon "any plate whatsoever, or upon any "wood, stone, or other material, "any bill of exchange, promissory "note, undertaking or order for " payment of money, or any part of "any bill of exchange, promissory "note, undertaking or order for " payment of money, in whatsoever "language the same may be ex-"pressed, and whether the same "shall or shall not be or be in-"tended to be under seal, purport-"ing to be the bill, note, undertak-"ing or order, or part of the bill, note, "undertaking or order, of any for-"eign prince, or state, or of any "minister or officer in the ser-"vice of any foreign prince or "state, or of any body corporate "or body of the like nature con-"stituted or recognized by any "foreign prince or state, or of any " person or company of persons res-"ident in any country not under "the dominion of her Majesty, or "shall use, or knowingly have in "his custody or possession, any "plate, stone, wood or other ma-"terial upon which any such for"eign bill, note, undertaking or or-"der, or any part thereof, shall be "engraved or made, or shall know-"ingly offer, utter, dispose of or " put off, or have in his custody or "possession, any paper upon which "any part of any such foreign bill, " note, undertaking or order shall be "made or printed, shall be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept in "penal servitude for any term not "exceeding fourteen years, and not "less than five years (27 & 28 Vict. "c. 47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-ment." (Previous enactments, 43 Geo. 3, c. 119, ss. 1, 2, and 11 Geo. 4 & 1 Will. 4, c. 66, s. 19.)

Making on a glass plate a positive impression of an undertaking of a foreign state for the payment of money by means of photography, without lawful authority or excuse, is a felony within this statute. Reg. v. Rinaldi, L. & C. 330; 33 L. J., M. C. 28; 12 W. R. 87; 9 L. T., N., S. 395.

Three foreigners were indicted for feloniously engraving and making two parts of a promissory note of the Emperor of Russia. The plates were engraved by an Englishman, who was an innocent agent in the transaction. Two of the prisoners only were present at the time when the order was given for the engraving of the plates; but they said they were employed to get it done by a third person, and there was some evidence to connect the third prisoner with the other two in subsequent parts of the transaction. The questions left to the jury were -first, whether the other two, who gave the order for the engraving, knew the nature of the instrument; and secondly, whether all three concurred in the order given. The judge told the jury that, in order

be satisfied that they jointly employed the engraver, but that it was not necessary that they should all be present when the order was given, as it would be sufficient if one first communicated with the other two, and that all three concurred in the employment of the engraver. The jury found the two guilty who gave the order. The third prisoner was acquitted. Reg. v. Mazeau, 9 C. & P. 676—Patte, son.

The 11 Geo. 4 & 1 Will. 4, c. 66 s. 18, applied to plates of promissory notes of persons carrying on the business of bankers in the province of Upper Canada. Reg. v. Hannon, 9 C. & P. 11; 2 M. C. C. 77.

The 24 & 25 Vict. c. 98, s. 16, extends to the engraving in England without authority of notes purporting to be notes of a banking company carrying on business in Scotland only, notwithstanding that s. 55 enacts that nothing in the act contained shall extend to Scotland. Reg. v. Brackenridge, 1 L. R., C. C. 133; 37 L. J., N. C. 86; 16 W. R. 816; 18 L. T., N. S. 369; 11 Cox, C. C. 96. But see 37 L. J., M. C. 88, n., which throws considerable doubts upon the soundness, consistency and tenability of this decision.

Z. was indicted for feloniously having in his possession a lithographic stone, on which was engraved a portion of a Dutch coupon. In the presence of an agent of the Dutch consulate, and of the person who signed the coupons, and after Z. had been told that if he had had anything to do with lithographing it would be better for him to tell it, he made a statement:—Held, that it was admissible against him. Reg. v. Zeigert, 10 Cox, C. C. 555—Willes.

and secondly, whether all three concurred in the order given. The judge told the jury that, in order to find all three guilty, they must Digitized by Microsoft®

A second lithographic stone was found in his lodgings, in respect of which another indictment had been preferred against him:—Held, that

it was competent for the prosecution to give evidence on the trial of the first indictment of what was on the second stone. *Ib*.

# (b) Bills of Exchange and Promissory Notes.

Statute. - By 24 & 25 Vict. c. 98, s. 22, "whosoever shall forge or "alter, or shall offer, utter, dispose " of or put off, knowing the same to "be forged or altered, any bill of "exchange, or any acceptance, in-"dorsement or assignment of any "bill of exchange, or any promis-" sory note for the payment of mon-"ey, or any indorsement or assign-" ment of any such promissory note, "with intent to defraud, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, "or for any term not less than five " years (27 & 28 Vict. c. 47), or to " be imprisoned for any term not ex-"ceeding two years, with or with-"out hard labour, and with or with-"out solitary confinement."

What.]—To constitute the forgery of a bill of exchange, the instrument must be a complete forging; an acceptance to an instrument in the form of a bill, but without the drawer's name, is not within the statute. Reg. v. Butterwick, 2 M. & Rob. 196—Parke.

Putting an address to the name of a drawer of a bill of exchange while the bill is in the course of completion, with intent to make the acceptance appear to be that of a different existing person, is forgery. Reg. v. Blenkinsop, 1 Den. C. C. 276; 2 C. & K. 531; 17 L. J., M. C. 62; 2 Cox, C. C. 420.

A document in the ordinary form of a bill of exchange, but requiring the drawee to pay to his own order, and purporting to be indorsed by the drawer, and accepted by the drawee, cannot, in an indictment for forgery and uttering, be treated

as a bill of exchange. Reg. v. Bartlett, 2 M. & Rob. 362—Erskine.

An instrument drawn by A. upon B., requiring him to pay the order of C. a certain sum, at a certain time, "without acceptance," is a bill, and may be so described in an indictment for forgery. Reg. v. Kinnear, 2 M. & Rob. 117—Patteson.

A forged bill of exchange, given in payment to one of two known partners, may be laid to be forged with intent to defraud that one, the partnership dealing having been conducted by him only. *Reg.* v. *Hanson*, 2 M. C. C. 245; Car. & M. 334.

A bill of exchange made payable to A., B., C., D. or order, executrixes. The indictment charged, that the prisoner forged on the back of a bill a certain forged indorsement, which indorsement was as follows (naming one of the executrixes):—Held, a forged indorsement. Reg. v. Winterbottom, 2 C. & K. 37; 1 Den. C. C. 41.

An indictment for uttering a forged bill of exchange is supported by proof of uttering an instrument in form of a bill with a forged acceptance on it, though there is no person named as drawee in the bill, Reg. v. Hawkes, 2 M. C. C. 60. See Peto v. Reynolds, 9 Exch. 410; S. C. (in error), 11 Exch. 418; and Fielder v. Marshall, 9 C. B., N. S. 606.

An instrument payable to the order of A., and directed "at Messrs. P. & Co., bankers," may be described as a bill of exchange in an indictment for forgery. Reg. v. Smith, 2 M. C. C. 295.

A writing directed to A. & Co., requiring them to pay the bearer on demand a sum of money, is not, on an indictment for forgery, a bill of exchange or an order for the payment of money. Reg. v. Curry, 2 M. C. C. 218.

the drawer, and accepted by the drawee, cannot, in an indictment used the name of another person for forgery and uttering, be treated for the purposes of his trade, and

afterwards accepted a bill in that name:—Held, that he could not be convicted of forgery, unless when he first assumed the fictitious name he contemplated the making of that specific bill. Reg. v. Whyte, 5 Cox, C. C. 290—Alderson and Talfourd.

The acceptance to what purported to be a bill of exchange was forged. At the time, however, this was so forged, the document had not been signed by the drawer:—Held, that the document, not having the signature of the drawer attached to it at the time of the acceptor's name was forged, was not a bill of Reg. v. Mopsey, 11 exchange. Cox, C. C. 143—Chambers, C. S.

Foreign. —The forging and uttering a Prussian treasury note for the payment of one dollar was within 43 Geo. 3, c. 139, s. 1. Rexv. Goldstein, 7 Moore, 1; 3 B. & B. 201; 10 Price, 88; R. & R. C. C. 473.

The 43 Geo. 3, c. 139, made to prevent forgery in Great Britain of foreign securities, was not to be understood to require that such securities should possess the technical properties required by the law of England, it being sufficient if they imported on the face of the whole instrument an undertaking or order for payment of money.

The forging of an indorsement in this country, on a bill drawn abroad on a person in this country, and payable in this country, was an offence within 39 Geo. 3, c. 63. Reg. v. Roberts, 7 Cox, C. C. 422; 7 Ir. C. L. R. 325—C. C. R.

Specific acts of Forgery.]—The forging a note which, for want of a signature, was incomplete, was not within the statute which made forging notes capital. Rex v. Pateman, R. & R. C. C. 455.

A bill drawn in fictitious names, where there are no such persons ex-

forgery. Rex v. Wilkes, 2 East, P. C. 957.

Forging a bill or a note, purporting to be payable to A. B. or order, is a complete offence, though there is no indorsement upon it in A. B.'s name. Rex v. Birket, Byl. Bills,

Forging a bill or a note for less than 20s. or 5l., which does not comply with the requisites of 17 Geo. 3, c. 30, or any other bill or note the legislature has declared void, is not within the statutes against forgery. Rex v. Moffatt, 1 Leach, C. C. 431; 2 East, P. C. 954.

On an indictment for forging a note, it appeared that it was not payable to the bearer on demand, or payable in money; that the maker only promised to take it in payment, and that the requisitions of the 17 Geo. 3, c. 30, were not complied with: — Held, that the forgery of such an instrument was not the subject of an indictment at common law. Rex v. Burke, R. & R. C. C. 496.

Where a prisoner was indicted for forging a bill, and the bill was payable to —— or order:—Held, that there must be a payee; forging an instrument payable to or order is not sufficient. Rex v. Randall, R. & R. C. C. 195.

And forging on unstamped paper a bill or a note which requires a stamp, is as much an offence as if it was on stamped paper. Rex·v. Hawkeswood, 2 T. R. 606, n.; S. P., Rex v. Morton, 2 East, P. C. 955; Rex v. Reculist, 2 Leach, C. C. 703; 2 East, P. C. 956.

It was not necessary that a note should be negotiable, in order to be a note within 2 Geo. 2, c. 25, so as to be the subject of an indictment for forging or uttering it. Rex v. Box, R. & R. C C. 300; 6 Taunt. 325.

An indictment stating the tenor or a note is sustained by proof that isting as the bill imports, may be a the attestation of the witness, and the words "M. W., her mark," were added after the prisoner's signature, though on the same occasion. Rex v. Dunn, 2 East, P. C. 976.

A promissory note for the payment of one guinea in cash, or Bank of England note, was not a note for the payment of money within 2 Geo. 2, c. 25. Rex v. Wilcocks, 2 Russ. C & M. 457.

Discharging a genuine indorsement, and inserting another, is altering the indorsement, and forgery. Rex v. Birkett, R. & R. C.

C. 251.

Altering a bill from a lower to a higher sum is forging it; and a person might have been indicted on 7 Geo. 2, c. 22, for forging such an instrument, although the statute had the word "alter" as well as "forge." Rex v. Teague, R. & R. C. C. 33; 2 East, P. C. 979.

If a person, having the blank acceptance of another, is authorized to write on it a bill of exchange for a limited amount, and he writes a bill of exchange for a larger amount, with intent to defraud either the acceptor or any other person; this is forgery. Rex v. Hart, 7 C. & P. 652; 1 M. C. C.

What is or is not a false making of a bill of exchange, is a question of law. Ib.

A., being in want of 1,000l., applied to B., who drew a bill for that amount, which A. accepted, payable at three months after date. In a few days B. came to A., and said that he could not get the 1,000% bill discounted, as it was too large, and proposed that two bills for 500% each should be substituted; one for 500l. was drawn by B., and accepted by A.: B., upon this, pretended to destroy the 1,000l. bill in A.'s presence, but did not in fact destroy it; on the contrary, he altered it from a bill at three, to a bill at twelve months:

with intent to defraud A. Atkinson, 7 C. & P. 669—Park.

By Adoption of False or Fictitious Names or Firms. \—It is felony to forge the name of a person, although such person never existed. Rex v. Bolland, 1 Leach, C. C. 83;

2 East, P. C. 958.

Writing the acceptance of an existing person to a bill of exchange without authority, or the name of a firm or person non-existing, in acceptance of a bill, with intent to defraud, is forgery; and if a person writes an acceptance in his own name to represent a fictitious firm, with intent to defraud, it is a forged acceptance; for if an acceptance represents a fictitious firm, it is the same as if it represented a fictitious person. Reg. v. Rogers, 8 C. & P. 629 — Bosanquet, Coleridge, and Coltman.

If a person gets another to accept a bill in his true name, intending at the time to represent such name to be the name of another person, for the purposes of fraud, it is a forgery. Reg. v. Mitchell, 1 Den. C. C. 282.

A receipt indorsed on a bill of exchange in a fictitious name is a forgery, although it does not purport to be the name of any particular person. Rex v. Taylor, 1 Leach, C. C. 215; 2 East, P. C. 690.

In order to complete the offence of a forgery, the signature need not be an exact fac-simile of that of the person represented, and a slight variance, if not such as would under the circumstances put a person on inquiry, will not suffice to take such a forgery out of the definition of the offence, when applied to the falsely putting the name of an existing person to an instrument, without authority, for the purpose of fraud. P. M. promised to get his mother-in-law, "C. W.'s" name to two notes. He brought the two notes which in the meantime he -Held, that this was forgery in B., had got his wife to sign by her

maiden name, "A. W.," and handed them over, saying, "Here are the notes." On his trial for forging and uttering these notes, the jury found him guilty, being of opinion that, when he got his wife's signature to them, he intended to pass them as the notes of his motherin-law:—Held, that the conviction was right, and the question which had been thus put to the jury was the correct way of leaving it to them. Reg. v. Mahony, 6 Cox, C. C. 487.

Signing a money order in an assumed name is forgery, if the name was assumed to defraud the person to whom such order was given, though the prisoner had borne other names unknown to the prosecutor, who knew him only by the assumed name. Rex v. Francis, R. & R. C. C. 209.

If, on an indictment for forging a bill of exchange it is proved that the prisoner assumed a false name for the purpose of pecuniary fraud, connected with the forgery, the drawing, accepting, or indorsing of such bill of exchange, in such false or assumed name, is forgery. v. Peacock, R. & R. C. C. 278.

Where a name made use of by a prisoner in a forged instrument is assumed by him with the intention of defrauding the prosecutor, it is forgery, though the prisoner's real name would have carried with it as much credit as the assumed name. Rex v. Whiley, R. & R. C. C. 90.

Indorsing a bill in a fictitious name is a forgery, though the bill would have then been equally negotiable if indorsed by the prisoner in his own name, if the fictitious name was used in order to defraud. Rex v. Marshall, R. & R. C. C. 75; S. P. Rex v. Taft, 1 Leach, C. C. 172; 2 East, P. C. 959.

If there are two persons of the same name, but of different descriptions or additions, and one signs his name with the description or addi-

fraud, it is forgery. Rex v. Webb, Bayl. Bills, 432.

If a bill of exchange, payable to A. or order, gets into the hands of another person of the same name as the payee, and such person, knowing that he was not the real person in whose favour it was drawn, indorses it, he is guilty of a forgery. Mead v. Young, 4 T. R. 28.

A nurseryman and seedsman got his foreman to accept two bills, the acceptances having no addition, description, or address, and afterwards, without the acceptor's knowledge, he added to the direction a false address, but no description, and represented in one case that the acceptance was that of a customer, and in the other case that it was that of a seedsman, there being in fact no such person at the supposed false address:—Held, that in the one case (the former) he was not guilty of forgery of the acceptance, but that in the other case he was. Reg. v. Epps, 4 F. & F. 81 -Willes.

Where a bill was drawn by the prisoner, and addressed to "Mr. T. B., Baize Manufacturer, Romford," and purported to have been accepted by him, payable when due at No. 40, Castle-street, Holborn, and it was proved that no such person resided at Romford, and that there was no baize manufactory there, and that he did not live at Castle-street; and the prisoner produced witnesses to prove that the acceptance was of the handwriting of T. B., but that he had never carried on the business of a baize manufacturer at Romford, nor resided at Castle-street:—Held, that, although this was a case of gross fraud, it did not amount to forgery, as the acceptance was written by a person of the name of T. B. v. Webb, 6 Moore, 447, n.; 3 B. & B. 228; R. & R. C. C. 405.

A prisoner named T. Story went to the post-office at N., and inquired tion of the other for the purpose of for a letter directed to "T. Story,

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post-office, Nottingham, to be left till ealled for"; and a letter directed to T. Storer, post-office, was given him, the post-master supposing that the prisoner was the person to whom it was directed, not noticing the difference of names; the letter contained a money order, of which the prisoner obtained payment on signing his own name on the back of it:—Held, that this was not forgery. Rex v. Story, R. & R. C. C. 81.

If the prisoner writes another's name across a blank stamp, on which, after he is gone, a third person, who is in league with him, writes a bill of exchange:—Semble, that this is not a forgery of the acceptance of a bill of exchange by the prisoner. Reg. v. Cooke, 8 C. & P. 582—Patteson.

Putting off a bill of exchange of A., an existing person, as the bill of exchange of A., a fictitious person, is a felonious uttering of the bill of a fictitious drawer. Reg. v.Nisbitt, 6 Cox, C. C. 320—Williams.

Under Presumption or Assumption of Authority.]—If A. puts the name of B. on a bill of exchange as acceptor, without B.'s authority, expecting to be able to meet it when due, or expecting that B. will overlook it; this is forgery. But if A. either had authority from B., or, from the course of their dealings, bonâ fide considered that he had such authority, it is not for-Rex v. Forbes, 7 C. & P. 224 — Coleridge: S. P. Reg. v. Parish, 8 C. & P. 94—Abinger.

The fact, that, on three or four previous occasions, when he had drawn bills in that way, the party whose name was used had paid them, even without remark or remonstrance, would. afford ground for the belief that he had such authority. Reg. v. Beard, 8 C. & P. 143—Coleridge.

money, puts the name of another on a bill without his authority, intending to pay the bill when due, and believing that he should be able to do so; this is forgery. Ib.

So, if a person, relying on the kindness of another (a near relation for instance), uses his name on a bill without authority, trusting that the person will pay it, rather than there should be a criminal prosecution on the subject; this also is a forgery. Ib.

If a person knows the acceptance of a bill of exchange to be forged, and uttered it as true, and believed that his bankers, to whom he uttered it, would advance money on it, which they would not otherwise, that is ample evidence of an intent to defraud, and evidence upon which a jury ought to act: and a person is not the less guilty of a forgery because he may intend ultimately to take up the forged bill, and may suppose that the party whose name is forged will be no loser; and the fact that the bill has been since paid by the forger will make no difference, if the offence was complete at the time of the uttering. Reg. v. Geach, 9 C. & P. 499—Parke.

A letter which had passed through the post-office before an alleged forgery, is admissible for the prisoner, in order to shew that he supposed he had a right to cause a name to be signed. Reg. v. Clifford, 2 C. & K. 202.

A letter from the prisoner to the prosecutor left unanswered is sufficient to warrant the jury in presuming a bonâ fide belief in an implied authority. Reg. v. Beardsall, 1 F. & F. 529—Campbell.

On an indictment for forging and uttering a bill, knowing it to be forged, it appearing that the person whose name was used was informed of it at the time, and did not repudiate it; the jury was directed to acquit, though he was called as a If a person, wishing to raise witness, and denied any previous authority. Reg. v. Smith, 3 F. & F. 504—Byles.

Evidence to negative Authority.] If a bill purporting to be accepted by J. K. is shewn to him, and he declares it to be a good bill, that is a sufficient proof that he wrote the acceptance. Rex v. Hevey, 1 Leach, C. C. 232.

Proof that a prisoner on uttering a note represented the maker as living at a particular place, and in a particular line of business, the evidence that it is not that person's note is sufficient to prove it a forgery, especially if the prisoner is the payee of the note; and proof that there is another person of the name in a different line of business will not make it necessary for the prosecutor to shew that it was not that person's note. Rex v. Hampton, 1 M. C. C. 255.

Where a bill purported to be accepted by "Samuel Knight, Market-place, Birmingham":—Held, on an indictment for the forgery of the acceptance, that the result of inquiries made at Birmingham by the prosecutor, who was not acquainted with the place, was evidence for the jury, though neither the best nor the usual evidence given to prove the non-existence of a party whose name is used. Rex v. King, 5 C. & P. 123—Park and Parke.

The prisoners were indicted for forging a bill of exchange. bill purported to be accepted by one George Smith, and was directed to George Smith, draper, Birm-The direction was in the handwriting of the prisoner, White, but the acceptance was not. George Smith, a draper, at Birmingham, proved that the acceptance was not his; that he had made personal inquiries, and consulted a directory, and could not discover that there was any other George Smith, a draper, at Birmingham. Letters were produced from White to Davis, in

which the former requested the latter to get him blank bills, signed by men of straw:—Held, first, that there was evidence to go to the jury that the George Smith who was called was the only draper of that name in Birmingham; and, secondly, that there was evidence for the jury that the name, George Smith, in the acceptance was fictitious, and that the acceptance was not the genuine acceptance of a man of straw signing his real name. Reg. v. White, 2 F. & F. 554—Cockburn.

On an indictment for uttering a forged cheque, it is sufficient to disprove the handwriting of the supposed maker; and he need not be called to disprove an authority to others to use his name; circumstances shewing guilty knowledge are enough. Reg. v. Hurley, 2 M. & Rob. 473—Cresswell.

By Procuration.]—By 24 & 25 Vict. c. 98, s. 24, "whosoever, " with intent to defraud, shall draw, "make, sigu, accept, or indorse any "bill of exchange or promissory "note, by procuration or otherwise, "for, in the name, or on the account " of any other person, without law-"ful authority, or excuse, or shall " offer, utter, dispose of, or put off, "any such bill or note so drawn, "made, signed, accepted, or in-"dorsed by procuration, or other-"wise, without lawful authority or "excuse as aforesaid, knowing the "same to have been so drawn, "made, signed, accepted, or in-"dorsed as aforesaid, shall be guil-"ty of felony."

Before this Enactment.]—A prisoner falsely averring an authority to indorse a bill of exchange for T. Tomlinson, wrote on the back of the bill, "Per procuration Thomas Tomlinson, Emanuel White." The bill was thereupon discounted, and the prisoner went off with the mo-

White, 1 Den. C. C. 208; 2 C. & K. 404; 2 Cox, C. C. 210.

### (c) Cheques.

By 24 & 25 Vict. c. 98, s. 25, "whenever any cheque or draft on "any banker shall be crossed with "the name of a banker, or with "two trausverse lines with the words "'and company,' or any abbrevia-"tion thereof, whosoever shall ob-"literate, add to, or alter any such "crossing, or shall offer, utter, dis-"pose of, or put off any cheque or "draft whereon any such oblitera-"tion, addition, or alteration has "been made, knowing the same to "have been made, with intent, in "any of the cases aforesaid, to de-"fraud, shall be guilty of felony, "and, being convicted thereof, shall "be liable, at the discretion of the "court, to be kept in penal servi-"tude for life or for any term not "less than five years (27 & 28)"Vict. c. 47), or to be imprisoned "for any term not exceeding two " years, with or without hard labour, " and with or without solitary con-"finement." (Previous enactment, 21 & 22 Vict. c. 79, s. 3.)

A forged cheque on the W. bank was presented for payment at the S. bank, where the supposed drawer never kept cash:-Held, that this was sufficient evidence of an intent to defraud the partners of the bank, although there was no probability of their paying the cheque, even if it had been genuine. Rex v. Crowther, 5 C. & P. 316—

Bosanquet.

A forged draft on a banker was an order for the payment of money within 7 Geo. 2, c. 22, although the person whose name was forged never kept cash with, or was known to, the banker. Rex v. Lockett, 1 Leach, C. C. 94; 2 East, P. C. 940.

On an indictment for forging a cheque purporting to be drawn by G. A. upon Messrs. J. L. & Co., authority. proof that no person named G. A. | that this would be a forgery, even

ney:-Held, no forgery. Reg. v. | keeps an account with or has any right to draw on Messrs. J. L. & Co., is primâ facie evidence that G. A. is a fictitious person. Rex v. Backler, 5 C. & P. 118—Gaselee and Parke.

A. gave to B., his clerk, a blank cheque, and directed him to fill it up with the amount of a bill of exchange, and expenses, (for which had to provide, and which amount B. was to ascertain,) and get the cheque cashed, and pay the amount to Mr. W., and take up the The bill was for 156l. 9s. 9d., the expenses about 10s. B. filled up the cheque with the sum of 250l., got it cashed, and kept the whole amount, alleging that it was due to him for salary:—Held, that this was forgery, and that this was so even if B. bonâ fide believed that the sum of 250l. was due to him from A., or even if it was really due to him. Reg. v. Wilson, 2 C. & K. 527; 1 Den. C. C. 284; 17 L. J., M. C. 82; 2 Cox, C. C. 426.

The drawer of a cheque on a bank which was duly honoured, and returned to him by the bank, afterwards altered his signature in order to give it the appearance of forgery, and to defraud the bank and cause the payee of the cheque to be charged with forgery:—Held, that this alteration did not constitute a forgery. Brittain v. Bank of London, 3 F. & F. 465; 11 W. Ř. 569; 8 L. T., N. S. 382—Q. B. But see 2 Russ. C. & M. 719.

In an action by payee against makers of a cheque, in which they pleaded that they did not make the cheque, their signatures were admitted, but it was open for the defendants, that the defendants, who were directors of a company of which the plaintiff was secretary, kept blauk cheques, with their signatures to them, in a book, and that this cheque was one of those filled up by the plaintiff without The judge intimated though the whole sum the cheque was drawn for was due to the The plaintiff's counsel plaintiff. elected to be nonsuited, and the judge ordered the cheque to be impounded in the hands of the associate, but would not order the plaintiff to be taken into custody, as no evidence of any forgery had been given, and the whole matter rested upon the statement of counsel Flower v. Shaw, 2 C. & K. 703—Wilde, C. J.: S. P. Wright's case, 1 Lewin, C. C. 135—Bayley.

Upon an indictment for the forgery of a cheque, dated Knighton, and purporting to be drawn by John Hust, it was proved that no John Hust lived at Knighton who would be likely to keep an account with a banker:--Held, evidence to go to the jury that John Hust was a fictitious person. Reg. v. Ashby,

2 F. & F. 560—Bramwell.

The practice was for a majority of the officers of a parish to draw cheques on the treasurer of a union; and one of their blank cheques, filled up for 1l. 3s. 6d., had a note at the bottom—"Unless this cheque is signed by a majority of the parish officers, it will not be cashed." This cheque was signed by one of the officers while it was for 1l. 3s. 6d.; it was altered to 3l. 3s. 6d., and when cashed by the treasurer had the signatures of a majority of the officers to it:--Held, that if the cheque was fraudulently altered when it had only one signature to it, this was no forgery, as it was then an incomplete instrument. Reg. v. Turpin, 2 C. & K. 820— Platt.

Forging and uttering an indorsement on a cheque, with a view to get it cashed by the credit of the name, will support a conviction for forgery, although the cheque is valid. Reg. v. Wardell, 3 F. & F. 82--Willes.

A cheque in which the order of the words is transposed (e. g. to

pounds"), is still a cheque, and an order for the payment of money, for the forgery of which an indictment will lie. Reg. v. Boreham, 2 Cox, C. C. 189—Pollock.

## (d) Documents purporting to be made Abroad.

By 24 & 25 Viet. c. 98, s. 40, "where the forging or altering any "writing or matter whatsoever, or "the offering, uttering, disposing " of, or putting off any writing or "matter whatsoever, knowing the "same to be forged or altered, is in "this act expressed to be an offence, " if any person shall, in England or "Ireland, forge or alter, or offer, " utter, dispose of, or put off, know-"ing the same to be forged or al-"tered, any such writing or matter, "in whatsoever place or country "out of England and Ireland, "whether under the dominion of "her Majesty or not, such writing " or matter may purport to be made "or may have been made, and in "whatever language the same or "any part thereof may be expressed, " every such person, and every per-"son aiding, abetting, or counsell-"ing such person, shall be deemed "to be an offender within the mean-"ing of this act, and shall be punish-"able thereby in the same manner "as if the writing or matter had "purported to be made or had been "in England or Ireland; and if "any person shall in England or "Ireland forge or alter, or offer, " utter, dispose of, or put off, know-"ing the same to be forged or al-"tered, any bill of exchange, or any "promissory note for the payment " of money, or any indorsement on "or assignment of any bill of ex-"change or promissory note for the "payment of money, or any accept-"ance of any bill of exchange, or "any undertaking, warrant, order, "authority, or request for the pay-"ment of money, or for the delivery "or transfer of any goods or se-"pay A. B. seventeen or bearer | "curity, or any deed, bond, or writ-

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"ing obligatory for the payment of "money (whether such deed, bond, "or writing obligatory shall be "made only for the payment of "money, or for the payment of mo-"ney together with some other pur-"pose), or any indorsement on or "assignment of any such undertak-"ing, warrant, order, authority, re-"quest, deed, bond, or writing ob-"ligatory, in whatsoever place or "country out of England and Ire-" land, whether under the dominion "of her Majesty or not, the money "payable or secured by such bill, "note, undertaking, warrant, order, "authority, request, deed, bond, "or writing obligatory may be or "may purport to be payable, and "in whatever language the same, "or any part thereof, may be ex-"pressed, and whether such bill, "note, undertaking, warrant, order, "authority, or request be or be not " under seal, every such person, and "every person aiding, abetting, or "counselling such person, shall be "deemed to be an offender within "the meaning of this act, and shall " be punishable thereby in the same "manner as if the money had been "payable, or had purported to be "payable, in England or Ireland." (Similar to 11 Geo. 4 & 1 Will. 4, c. 66, s. 30.)

On an indictment for forging and uttering a cheque or an order for the payment of money, it appearing that the cheque was dated as if drawn abroad; but there being evidence, by comparison of handwriting, that it was drawn abroad, and also evidence that he caused it to be presented to a banker abroad, through whom it was presented in this country without a stamp:-Held, that the prisoner might be convicted of uttering it in this country, if he set it in circulation abroad. Reg. v. Taylor, 4 F. & F. 511— Pigott.

(e) Court Rolls. By 24 & 25 Vict. c. 98, s. 30,

"whosoever shall forge or alter, or "shall offer, utter, dispose of, or "put off, knowing the same to be "forged or altered, any court roll, "or copy of any court roll, relating "to any copyhold or customary "estate, with intent to defraud, shall "be guilty of felony."

### (f) Debentures.

By 24 & 25 Vict. c. 98, s. 26, "whosoever shall fraudulently forge "or alter, or shall offer, utter, dis-"pose of, or put off, knowing the "the same to be forged or fraud-"ulently altered, any debenture is-"sued under any lawful authority "whatsoever, either within her Maj-" esty's dominions or elsewhere, shall "be guilty of felony, and, being "convicted thereof, shall be liable, "at the discretion of the court, to "be kept in penal servitude for any "term not exceeding fourteen years, "and not less than five years (27 & "28 Vict. c. 47), or to be imprison-"ed for any term not exceeding two " years, with or without hard la-"bour, and with or without solita-"ry confinement."

## (g) Deeds or Bonds.

By 24 & 25 Vict. c. 98, s. 20, "whosoever, with intent to defraud, "shall forge or alter, or shall offer, "utter, dispose of, or put off, know-"ing the same to be forged or al-"tered, any deed, or any bond or " writing obligatory, or any assign-"ment at law or in equity of any "such bond or writing obligatory, " or shall forge any name handwrit-"ing, or signature purporting to be "the name, handwriting, or signa-"ture of a witness attesting the "execution of any deed, bond, or "writing obligatory, or shall offer, "utter, dispose of, or put off any "deed, bond or writing obligatory "having thereon any such forged "name, handwriting, or signature, "knowing the same to be forged, "shall be guilty of felony, and, be-"ing convicted thereof, shall be lia-

"ble, at the discretion of the court, " to be kept in penal servitude for "life, or for any term not less than " five years (27 & 28 Vict. c. 47), or "to be imprisoned for any term not "exceeding two years, with or with-" out hard labour, and with or with-"out solitary confinement," (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 10.)

On an indictment for forgery of an administration bond on administration granted of the effects of S., it was objected, that 22 & 23 Car. 2, c. 10, requiring the bond to be given by the party to whom administration was granted, and not by the party that was entitled to administration, no forgery was made out; but the bond was a good bond within the statute, having been given by the party to whom, in fact, administration was granted:—Held, that this was not a good objection. Reg. v. Barber, 1 C. & K. 434— Gurney, Williams and Maule.

Forging a deed was within 2 Geo. 2, c. 25, s. 1, although there may have been subsequent directory provisions by other statutes, that instruments for the same purpose as such forged deed shall be in a particular form, or shall comply with certain requisites, and the forged deed was not in that form, and did not comply with those requisites; for the directory provisions do not make the deed (although out of the form prescribed, and without the requisites) wholly void. Rex v. Lyon, R. & R. C. C. 255.

A deed really executed by the parties between whom it purports to be made, but ante-dated with intent fraudulently to defeat a prior deed, is a forgery. Reg. v. Ritson, 18 W. R. 73; 21 L. T., N. S. 437; 39 L. J., M. C. 10; 1 L. R., C. C.

A. by deed, bearing date on the 7th of May, 1868, conveyed on that day certain lands to B. in fee. Subsequently, on the 26th of April, 1869, C. produced a deed, bearing date the 12th of March, 1868, pur-

porting to be a demise of the same land for a long term of years, as from the 25 of March, 1868, from A. to C. The alleged lease was executed after A.'s conveyance to B., and ante-dated for the purpose of defrauding B.:—Held, that A. and C. were guilty of forgery.

#### (h) Evidential Instruments.

By 24 & 25 Viet. c. 98, s. 29, "whosoever shall forge or fraudu-"lently alter, or shall offer, utter, "dispose of, or put off, knowing the "same to be forged or fraudulently "altered, any instrument, whether "written or printed, or partly writ-"ten and partly printed, which is or "shall be made evidence by any "act passed or to be passed, and "for which offence no punishment "is herein provided, shall be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-" cretion of the court, to be kept in "penal servitude for any term not "exceeding seven years, and not "less than five years (27 & 28 Vict. "c. 47), or to be imprisoned for any "term not exceeding two years, " with or without hard labour, and "with or without solitary confine-" ment."

An indictment stating that the prisoner forged a certain paper instrument, partly printed and partly written, in the words and figures following, that is to say, &c., was bad in form, as it did not state what the instrument was in respect of which the forgery was committed, nor how the party signing it had authority to sign it. Rex v. Wilcox, R. & R. C. C. 50.

## (i) Exchequer Bills or Bonds.

By 24 & 25 Vict. c. 98, s. 8, "who-"soever shall forge or alter, or shall "offer, utter, dispose of, or put off, "knowing the same to be forged or "altered, any Exchequer bill or Ex-"chequer bond or Exchequer de-"benture, or any indorsement on or "assignment of any Exchequer bill

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"or Exchequer bond or Exchequer debenture, or any receipt or cer"tificate for interest accruing there"on, with intent to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

By s. 9, "whosoever, without law-"ful authority or excuse (the proof "whereof shall lie on the party ac-"cused), shall make, or cause or pro-" cure to be made, or shall aid or as-"sist in making, or shall knowingly "have in his custody or possession, "any frame, mould, or instrument "having therein any words, letters, "figures, marks, lines, or devices pe-" culiar to and appearing in the sub-" stance of any paper provided or to " be provided or used for Exchequer "bills or Exchequer bonds or Ex-"chequer debentures, or any ma-"chinery for working any threads "into the substance of any paper, " or any such thread, and intended "to imitate such words, letters, fig-"ures, marks, lines, threads, or de-"vices, or any plate peculiarly "employed for printing such Ex-"chequer bills, bonds, or deben-"tures, or any die or any seal pe-"culiarly used for preparing any " such plate, or for sealing such Ex-"chequer bills, bonds, or debentures, " or any plate, die, or seal intended "to imitate any such plate, die, or "seal as aforesaid, shall be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept "in penal servitude for any term "not exceeding seven years and not "less than five years (27 & 28 Viet. "c. 47), or to be imprisoned for any "term not exceeding two years, " with or without hard labour, and "with or without solitary confinement."

By s. 10, "whosoever, without "lawful authority or excuse (the "proof whereof shall lie on the "party accused), shall make, or "cause or procure to be made, or "aid or assist in making, any paper "in the substance of which shall ap-"pear any words, letters, figures, "marks, lines, threads or other de-" vices peculiar to and appearing in "the substance of any paper provid-"ed or to be provided or used for "such Exchequer bills, bonds, or "debentures, or any part of such "words, letters, figures, marks, "lines, threads, or other devices, "and intended to imitate the same, " or shall knowingly have in his cus-"tody or possession any paper what-"soever in the substance whereof "shall appear any such words, let-"ters, figures, marks, lines, threads, "or devices, as aforesaid, or any "parts of such words, letters, fig-"ures, marks, lines, threads, or "other devices, and intended to im-"itate the same, or shall cause or as-" sist in causing any such words, let-"ters, figures, marks, lines, threads, "or devices as aforesaid, or any "part of such words, letters, fig-"ures, marks, lines, threads, or other "devices, and intended to imitate "the same, to appear in the sub-"stance of any paper whatever, or "shall take or assist in taking any "impression of any such plate, die, "or seal as in the last preceding " section mentioned, shall be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept in "penal servitude for any term not "exceeding seven years, and not "less than five years (27 & 28 "Viet. c. 47), or to be imprisoned "for any term not exceeding two " years, with or without hard la-"bour, and with or without solitary " confinement."

" ful authority or excuse (the proof) "whereof shall lie on the party ac-"cused), shall purchase or receive, "or knowingly have in his custody " or possession, any paper manufac-"tured and provided by or under "the directions of the Commission-"ers of Inland Revenue or Com-" missioners of her Majesty's Treas-"ury, for the purpose of being used "as Exchequer bills or Exchequer "bonds or Exchequer debentures, "before such paper shall have been "duly stamped, signed, and issued "for public use, or any such plate, "die, or seal as in the last two pre-"ceding sections mentioned, shall "be guilty of a misdemeanor, and, "being convicted thereof, shall be "liable, at the discretion of the "court, to be imprisoned for any "term not exceeding three years, "with or without hard labour."

#### (i) India Bonds, Stock, or Certificates.

By 24 & 25 Vict. c. 98, s. 7, "who-"soever shall forge or alter, or shall " offer, utter, dispose of, or put off, "knowing the same to be forged "or altered, any bond, commonly "called an East India bond, or any "bond, debenture, or security issued "or made under the authority of "any act passed or to be passed re-"lating to the East Indies, or any "indorsement on or assignment of "any such bond, or debenture, or "security, with intent to defraud, "shall be guilty of felony, and, be-"ing convicted thereof, shall be lia-"ble, at the discretion of the court, "to be kept in penal servitude for "life, or for any term not less than "five years (27 & 28 Vict. c. 47), " or to be imprisoned for any term "not exceeding two years, with or "without hard labour, and with or "without solitary confinement."

25 & 26 Vict. c, 7, s. 14, "makes "it felony to forge or utter certifi-"cates of India stock, transferable "at the Bank of England or of Ire-"land."

By 26 & 27 Vict. c. 73, s. 13, "forging India stock certificates or "coupons is a felony."

By s. 14, "the personation of own-"ers of India stock certificates or

"coupons is a felony." By s. 15, "engraving upon plates

" of India stock certificates or cou-"pons is a felony."

(k) Marriage Licences or Certificates.

By 24 & 25 Vict. c. 98, s. 35, "whosoever shall forge or fraudu-"ently alter any licence of or cer-"tificate for marriage, or shall offer, "utter, dispose of, or put off any "such licence or certificate, know-"ing the same to be forged or fraud-"ulently altered, shall be guilty of "felony, and, being convicted there-" of, shall be liable, at the discretion " of the court, to be kept in penal "servitude for any term not exceed-"ing seven years, and not less than "five years (27 & 28 Vict. c. 47), " or to be imprisoned for any term "not exceeding two years, with or "without hard labour, and with or "without solitary confinement." (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 20.)

If A. gives to B. a forged certificate of a pretended marriage between himself and B., in order that B. may give it to a third party, A. is not guilty of an uttering. v. Heywood, 2 C. & K. 352—Alderson.

## (1) Orders and Proceedings of Magistrates.

By 24 & 25 Vict. c. 98, s. 32, "whosoever, with intent to defraud, "shall forge or alter, or shall offer, " utter, dispose of, or put off, know-"ing the same to be forged or al-"tered, any summons, conviction, "order, or warrant of any justice " of the peace, or any recognizance "purporting to have been entered "into before any justice of the "peace, or other officer authorized "to take the same, or any examin-"ation, deposition, affidavit, affirm-

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"ation, or solemn declaration, tak"en or made before any justice of
"the peace, shall be guilty of fel"ony, and, being convicted thereof,
"shall be liable, at the discretion of
"the court, to be kept in penal serv"itude for the term of five years
"(27 & 28 Viet. c. 47), or to be im"prisoned for any term not exceed"ing two years, with or without
"hard labour, and with or without
"solitary confinement."

Forging a magistrate's order to pay money under hand only was not a capital offence, as the 17 Geo. 2, c. 5, under which the magistrate had power to make it, required it to be under hand and seal. Rex v. Rushworth, R. & R. C. C. 317; 1

Stark. 396.

And so, if it was addressed to the treasurer of the county, instead of the high constable, the magistrate having no power by the act to make it upon the former. *Ib*.

The 7 Geo. 2, c. 22, was not confined to commercial transactions, but would have applied to an order made by a justice to a high constable or treasurer to pay a reward. Rex v. Graham, 2 East, P. C. 945.

An order was made under 48 Geo. 3, c. 75, s. 6, purporting on the face of it to be an order of a magistrate on the treasurer of a county, to allow one J. C. the expenses of burying a dead body cast on shore :-Held, that this was a forgery, although there was no such magistrate in the county of the name of the person who signed the order, and although J. C. was not therein stated to be a parish officer, or that the expenses incurred were necessary. Rex v. Froude, 3 Moore, 645; 7 Price, 609; 1 B. & B. 300; R. & R. C. C. 389.

Forging an order from a magistrate to a gaoler to discharge a prisoner as upon bail having been given, is forgery at common law. Rex v. Harris, 1 M. C. C. 393; 6 C. & P. 129.

(m) Records, Judicial and Curial Process.

By 24 & 25 Viet. c. 98, s. 27, "whosoever shall forge or fraudu-"lently alter, or shall offer, utter, "dispose of, or put off, knowing "the same to be forged or fraudu-"lently altered, any record, writ, "return, panel, process, rule, or-"der, warrant, interrogatory, de-"position, affidavit, affirmation, re-"cognizance, cognovit actionem, or "warrant of attorney, or any orig-"inal document whatsoever, of or "belonging to any court of record, "or any bill, petition, process, no-"tice, rule, answer, pleading, inter-"rogatory, deposition, affidavit, af-"firmation, report, order, or decree, " or any original document whatso-"ever, of or belonging to any court " of equity or court of admiralty in "England or Ireland, or any docu-"ment or writing, or any copy of "any document or writing, used or "intended to be used as evidence "in any court in this section men-"tioned, shall be guilty of felony, "and being convicted thereof shall " be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "seven years, and not less than five " years (27 & 28 Vict. c. 47), or to "to be imprisoned for any term not "exceeding two years, with or with-"out hard labour, and with or with-"solitary confinement."

By s. 28, "whosoever, being the "clerk of any court, or other officer" having the custody of the records of any court, or being the deputy of any such clerk or officer, shall utter any false copy or certificate of any record, knowing the same to be false; and whosoever, other than such clerk, officer, or deputy, "shall certify any copy or certificate of any record of such clerk, "officer, or deputy; and whosoever shall forge or fraudulently alter, or offer, utter, dispose of, or put off, knowing the same to be forged

" or fraudulently altered, any copy | " or certificate of any record, or "shall offer, utter, dispose of, or " put off any copy or certificate of "any record having thereon any false or forged name, handwriting, "or signature, knowing the same "to be false or forged; and who-"soever shall forge the seal of any "court of record, or shall forge or "fraudulently alter any process of "any court other than such courts "as in the last preceding section "mentioned, or shall serve or en-"force any forged process of any "court whatsoever, knowing the "same to be forged, or shall deliver "or cause to be delivered to any "person any paper falsely purport-"ing to be any such process, or a "copy thereof, or to be any judg-"ment, decree, or order of any "court of law or equity, or a copy "thereof, knowing the same to be "false, or shall act or profess to "act under any such false process, "knowing the same to be false, "shall be guilty of felony." ishment as in preceding section.)

The practice of issuing (ancient common law) county court processes in blank, for the attorneys to fill up after they had been issued by the county clerk, was highly irregular. And semble, that the filling up of a county court summons, or altering a distringas into a summons, after it had been so issued in blank, was a forgery at common law. Rex v. Collier, 5 C. & P. 160—Patteson.

One who was committed to gaol under an attachment for a contempt in a civil cause, counterfeited a pretended discharge, as from his creditor to the sheriff and gaoler, under which he obtained his discharge:—Held, a misdemeanor at common law, although the attachment not being for non-payment of money, the order was in itself a mere nulity, and no warrant to the sheriff for his discharge. Rex v. Fawcett, 2 East, P. C. 862.

To constitute the offence of act-

ing, or professing to act, under false colour or pretence of the process of the county court, it is not necessary that there should be any actual process in existence, or anything on the face of it purporting to be such. Reg. v. Evans, Dears. & B. C. C. 236; 3 Jur., N. S. 594; 26 L. J., M. C. 92; 7 Cox, C. C. 293.

A notice to produce, given in a pretended cause in a county court, is not process of the court within 9 & 10 Vict. c. 95, s. 57. Reg. v. Castle, Dears. & B. C. C. 363; 3 Jur., N. S. 1308; 27 L. J., M. C. 70; 7 Cox, C. C. 375.

The prisoner had obtained a blank form used in a county court for the plaintiff to fill in particulars as instructions for issuing summonses; this he filled up and signed it, without any authority, "W. G., registrar of the Taunton Court." On the back of the form he wrote. "Unless the whole amount claimed by A. R., draper of T., is paid on Saturday, an execution warrant will be immediately issued against you. Witness my signature, W. G." The prisoner sent the form thus filled up to a person who was indebted to him:-Held, that this was acting, or professing to act, under the false colour or pretence of the process of the county court, within 9 & 10 Viet. c. 95, s. 57. Reg. v. Richmond, Bell, C. C. 142; 5 Jur., N. S. 521; 28 L. J., M. C. 188; 7 W. R. 417; 32 L. T. 139; 8 Cox, C. C. 200.

But the 9 & 10 Vict. c. 95, s. 57, does not apply to mere false representations or assertion of authority to receive a debt. Reg. v. Myott, 6 Cox, C. C. 406—Crompton.

Accountant-General and other Officers' Names.]—By 24 & 25 Vict. c. 98, s. 33, "whosoever, with in"tent to defraud, shall forge or al"ter any certificate, report, entry, "indorsement, declaration of trust, "note, direction, authority, instru"strument, or writing made or pur-

"porting or appearing to be made "by the accountant-general, or any " other officer of the Court of Chan-" cery in England or Ireland, or by " any judge or officer of the Landed "Estates Court in Ireland, or by "any officer of any court in Eng-"land or Ireland, or by any cashier "or other officer or clerk of the "Bank of England or Ireland, or "the name, handwriting, or signa-"ture of any such accountant-gen-"eral, judge, cashier, officer, or "clerk as aforesaid, or shall offer, "utter, dispose of, or put off any "such certificate, report, entry, in-"dorsement, declaration of trust, "note, direction, authority, instru-"ment, or writing, knowing the "same to be forged or altered, shall "be guilty of felony, and, being "convicted thereof, shall be liable, "at the discretion of the court, to be "kept in penal servitude for any "term not exceeding fourteen years, " and not less than five years (27 & "28 Vict. c. 47), or to be impris-"oned for any term not exceeding "two years, with or without hard "labour and with or without sol-"itary confinement." (Former provision, 12 Geo. 1, c. 32, s. 9.)

Forging a paper writing, purporting to be an office copy of a report of the accountant-general's, of money being paid into the bank, and also an office copy of a certificate of one of the cashiers of the bank, was within 12 Geo. 1, c. 32, s. 9. Rex v. Gibson, 1 Leach, C. C. 61; 2 East, P. C. 899.

## (n) Registers of Births, Marriages and Deaths.

By 24 & 25 Vict. c. 98, s. 36, "whosoever shall unlawfully de"stroy, deface or injure, or cause or "permit to be destroyed, defaced "or injured, any register of births, "baptisms, marriages, deaths or "burials which now is or hereafter "shall be by law authorized or re"quired to be kept in England or "Ireland, or any part of any such

"register, or any certificate copy " of any such register, or any part "thereof, or shall forge or fraudu-"lently alter in any such register "any entry relating to any birth, "baptism, marriage, death or bur-"ial, or any part of any such regis-"ter, or any certified copy of such "register, or of any part thereof, or "shall knowingly and unlawfully "insert or cause or permit to be in-" serted in any such register, or in "any certified copy thereof, any "false entry of any matter relating "to any birth, baptism, marriage, "death or burial, or shall knowing-"ly and unlawfully give any false "certificate relating to any birth, " baptism, marriage, death or burial, " or shall certify any writing to be "a copy or extract from any such " register, knowing such writing, or "the part of such register whereof "such copy or extract shall be so "given, to be false in any material " particular, or shall forge or coun-"terfeit the seal of or belonging to "any register office or burial board, " or shall offer, utter, dispose of or "put off any such register, entry, "certified copy, certificate or seal, "knowing the same to be false, "forged or altered, or shall offer, "utter, dispose of or put off any "copy of any entry in any such "register, knowing such entry to "be false, forged or altered, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be " kept in penal servitude for life, or "for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not ex-" ceeding two years, with or with-"out hard labour, and with or with-"solitary confinement." provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 20.)

By s. 37, "whosoever shall know-"ingly and wilfully insert, or cause "or permit to be inserted, in any "copy of any register directed or "required by law to be transmitted

"to any registrar or other officer, "any false entry of any matter re-"lating to any baptism, marriage " or burial, or shall forge or alter, "or shall offer, utter, dispose of or " put off, knowing the same to be "forged or altered, any copy of any "register so directed or required to "be transmitted as aforesaid, or "shall knowingly and wilfully sign " or verify any copy of any register "so directed or required to be trans-"mitted as aforesaid, which copy " shall be false in any part thereof, "knowing the same to be false, or "shall unlawfully destroy, deface " or injure, or shall for any fraudu-"lent purpose take from its place of "deposit, or conceal, any such copy "of any register, shall be guilty " of felony." (Punishment as in preceding section.) (Previous provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 22.)

The latter act made it an offence to utter any writing as and for a copy of an entry in any register of marriage made or kept by the vicar of any parish in England:-Held, first, that the indictment for that offence need not set out the instrument, as the words of 2 & 3 Will. 4, c. 123, s. 3, stating it to be sufficient in forgery to describe the instrument as in an indictment for stealing it, were applicable to such a case, although the instrument itself could not be the subject of an indictment for larceny; and, secondly, that the judges could take judicial notice that the parish of Seighford, in the county of Stafford, is a parish in England, and that the indictment need not aver that fact. Reg. v. Sharpe, 8 C. & P. 436— Parke and Patteson.

## (o) Registries of Deeds.

By 24 & 25 Vict. c. 98, s. 31, "whosoever shall forge or fraudu-"lently alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or fraudulently altered, any memorial, affidavit,

" affirmation, entry, certificate, in-"dorsement, document or writing "made or issued under the provis-"ions of any act passed or hereafter "to be passed for or relating to the "registry of deeds; or shall forge " or counterfeit the seal of or belong-"ing to any office for the registry " of deeds, or any stamp or impres-"sion of any such seal; or shall "forge any name, handwriting or "signature purporting to be the "name, handwriting or signature of "any person to any such memorial, "affidavit, affirmation, entry, cer-" tificate, indorsement, document or " writing which shall be required or "directed to be signed by or by vir-"tue of any act passed or to be pass-"ed, or shall offer, utter, dispose "of or put off any such memo-"rial or other writing as in this " section before mentioned, having "thereon any such forged stamp or "impression of any such seal, or "any such forged name, handwrit-"ing or signature, knowing the "same to be forged, shall be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept in "penal servitude for any term not "exceeding fourteen years, and not "less than five years (27 & 28 "Vict. c. 47), or to be imprison-"ed for any term not exceeding "two years, with or without hard "labour, and with or without soli-"tary confinement."

## (p) Seals of the Kingdom.

By 24 & 25 Vict. c. 98, s. 1, "whosoever shall forge or counter"feit, or shall utter, knowing the "same to be forged or counter-feited, 
"the great seal of the United King"dom, her Majesty's privy seal, 
"any privy signet of her Majesty, 
"her Majesty's royal sign-manual, 
"any of her Majesty's seals appoint"ed by the twenty-fourth article of 
"the union between England and 
"Scotland to be kept, used and con"tinued in Scotland, the great seal

" of Ireland, or the privy seal of Ire-"land, or shall forge or counterfeit "the stamp or impression of any of "the seals aforesaid, or shall utter " any document or instrument what-"soever having thereon or affixed "thereto the stamp or impression " of any such forged or counterfeit-"ed seal, knowing the same to be "the stamp or impression of such "forged or counterfeited seal, or "any forged or counterfeited stamp " or impression made or apparently "intended to resemble the stamp "or impression of any of the seals " aforesaid, knowing the same to be "forged or counterfeited, or shall " forge or alter, or utter, knowing "the same to be forged or altered, "any document or instrument hav-"ing any of the said stamps or im-" pressions thereon or affixed there-"to, shall be guilty of felony, and "being convicted thereof, shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude for life, or for any term not "less than five years (27 & 28 Vict. "c. 47), or to be imprisoned for any "term not exceeding two years, " with or without bard labour, and "with or without solitary confine-" ment." (Previous provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 2.

(q) Stamps.

Forging and Uttering.]—Delivering a box, containing forged stamps, to the party's own servant, that he may carry them to an inn, to be forwarded by the carrier to a customer in the country is an uttering. Rex v. Collicott, R. & R. C. C. 212; 2 Leach, C. C. 1048; 4 Taunt. 300.

If a person engraves a counterfeit stamp, similar in some parts, dissimilar in others, to the legal stamp, and, cutting out the dissimilar parts, utters the similar parts as genuine, concealing the space whence the dissimilar part is cut out; this amounts to a forgery and uttering. Ib.

ing a stamp, it is enough to describe it as a stamp provided and used in pursuance of an act of parliament, without setting out the impression or inscription, or naming ing the amount of duty denoted thereby. Ib.

Quære, whether a person who took some of the stamps from a writ, and then fixed them to another writ of the same kind, and then sold it for the purpose of its being used by such persons as might buy it from his vendee, was within 12 Geo. 3, c. 48? Rex v. Field, 1 Leach, C. C. 383.

Knowingly selling plate with the king's mark forged on it, was not. capital, but only subject to transportation. Rex v. Hope, 1 M. C. C. 396.

Having false stamped Paper. ]— Where on indictment for having in possession certain reams paper, with counterfeit marks, and impressions of certain stamps used to denote the duty imposed in respect of paper, on the covers or wrappers, it was proved that the paper came from the prisoner at Exeter, and was brought thence by his servant to Topsham, in the county of Devon, and seized by the custom officer on board a vessel at Topsham:—Held, that this was in law a custody and possession in the prisoner in the county of Devon sufficient to maintain the indictment in that county. Rex v. Pim, R. & R. C. C. 425.

Transposing Stamps. 55 Geo. 3. c. 184, s. 7, and 4 & 5 Vict. c. 56.] —It was the duty of a clerk in the stamp office to cut off the corners of parchments which bore the blue paper stamps allowed for as spoiled by the commissioners of stamps, and to put the blue paper stamps and the small pieces of parchment so cut off, and which were glaed to them, into the fire, without separating them. Instead of doing this, he In describing the offence of forg- | separated a blue paper stamp from

the small piece of parchment to which it had been glued, and glued it to a new skin of parchment, on which the words "This indenture" The jury found had been written. that he had no fraudulent intent when he cut the stamp from the skin of parchment, but that he had when he separated the blue paper stamp from the small piece of parchment; and that he then intended to apply the stamp to a parchment intended to be used as an indenture: —Held, that this was a capital offence. Rex v. Smith, 5 C. & P. 107; 1 M. C. C. 314.

It being uncertain whether the stamp so separated was impressed before or after 55 Geo. 3, c. 184:—Held, that the party might be properly convicted on a count stating the stamp to be the impression of a die made and used "in pursuance of the statute made and provided for denoting a certain duty, being one of those under the management of the commissioners of stamps." Ib.

A person might be found guilty under 13 Geo. 3, c. 52, s. 14, and 38 Geo. 3, c. 69, s. 7, if proved to have transposed the mark of the Goldsmith's Company from one gold ring to another, although both rings were genuine, and although the jury might be of the opinion that he did so without any fraudulent intention. Rex v. Ogden, 6 C. & P. 631.

Using the same Stamp more than once.]—To constitute a felony under 12 Geo. 3, c. 48, s. 1, of writing some matter or thing liable to stamp-duty on paper on which had been before written some other matter liable to stamp-duty, before the paper had been again stamped, it was essential that the party writing should do it with some fraudulent intent. Reg. v. Allday, 8 C. & P. 136—Abinger.

## (r) Trade Marks.

(See 25 & 26 Vict. c. 88.)

The prosecutor, Borwick, sold powders called "Borwick's baking powders," and "Borwick's egg powders," wrapped up in printed papers. The prisoner procured 10,000 wrappers to be printed similar to Borwick's, except that the name of Borwick was omitted on the baking powders. In these wrappers prisoner inclosed powders of his own, which he sold for Borwick's powders. The jury found that the wrappers so far resembled Borwick's as to deceive persons of ordinary observation, and that they were procured and used by the prisoner with an intent to defraud: -Held, that he could not be convicted of forgery, though he was liable to be indicted for false preten-Reg. v. Smith, 8 Cox, C. C. 32; 4 Jur., N. S. 1003; Dears. & B. C. C. 566; 27 L. J., M. C. 225.

## (s) Transfer of Stock or Shares.

By 24 & 25 Viet. c. 98, s. 2, "whosoever shall forge or alter, or " shall offer, utter, dispose of or put "off, knowing the same to be forg-"ed or altered, any transfer of "any share or interest of or in any "stock, annuity or other public "fund which now is or hereafter "may be transferable at the Bank " of England or at the Bank of Ire-"land, or of or in the capital stock " of any body corporate, company "or society which now is or here-"after may be established by char-"ter, or by, under or by virtue of "any act of parliament, or shall "forge or alter, or shall offer, utter " dispose of or put off, knowing the "same to be forged or altered, any "power of attorney or other author-"ity to transfer any share or inter-" est of or in any such stock, annui-"ty, public fund or capital stock, "or to receive any dividend or

"money payable in respect of any " such share or interest, or shall de-"mand or endeavor to have any " such share or interest transferred, "or to receive any dividend or "money payable in respect thereof," "by virtue of any such forged or "altered power of attorney or oth-" er authority, knowing the same to " be forged or altered, with intent "in any of the cases aforesaid to de-"fraud, shall be guilty of felony, "and, being convicted thereof. " shall be liable, at the discretion of "the court, to be kept in penal serv-"itude for life, or for any term not "less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour, and with or without solita-"ry confinement." (Former enactment, 11 Geo. 4 & 1 Will. 4, c. 66,

By s. 4, "whosoever shall forge "any name, handwriting or signa-"ture purporting to be the name, "handwriting or signature of a wit-"ness attesting the execution of "any power of attorney or other " authority to transfer any share or "interest of or in any such stock, "annuity, public fund or capital "stock as is in either of the last "two preceding sections mentioned, "or to receive any dividend or "money payable in respect of any "such share or interest, or shall of-"fer, utter, dispose of or put off "any such power of attorney or "other authority, with any such "forged name, handwriting or sig-" nature thereon, knowing the same "to be forged, shall be guilty of "felony, and, being convicted "thereof, shall be liable, at the dis-" cretion of the court, to be kept in " penal servitude for any term not "exceeding seven years, and not "less than five years (27 & 28 "Viet. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la" ry confinement." (Previous provision, 11 Geo. 4 & 1 Will. 4, c. 66,

An indictment for forging a transfer of stock is good, although the stock has never been accepted by the person in whose name it stood, and although the transfer was not witnessed according to the rules and directions of the bank. Rex v. Gade, 2 Leach, C. C. 732; 2 East, P. C. 874.

A., a share-broker, had bought twenty shares in a railway company of L., a broker, which stood in the name of P.; but L. did not send A. the deed of transfer, as A. was in embarrassed circumstances, and owed L. money. A. procured a boy to execute a deed of transfer of the shares in the name of P.; all the calls in the shares had been paid up:—Held, a forgery, and that A. could be convicted on counts laying an intent to defraud P. and the railway company. Reg. v. Hoatson, 2 C. & K. 777—Rolfe.

A power of attorney to transfer government stock, signed, sealed and delivered, was a deed within 2 Geo. 2, c. 25, s. 1. Rex v. Fauntleroy, 1 M. C. C. 52; 2 Bing. 413; 10 Moore, 1; 1 C. & P. 421; S. P. Rex v. Pringle, 1 M. C. C. 68.

Forging a power of attorney to receive a seaman's wages, in the name of a supposed child as administratrix of such scaman, who, in fact, died childless, is a forgery. Rex v. Lewis, 2 East, P. C. 957.

Making false Entries in public Transfer Books. - By 24 & 25 Vict. c. 98, s. 5, "whosoever shall wilfully " make any false entry in, or wilfully " alter any word or figure in, any of "the books of account kept by the "Bank of England or the Bank of "Ireland, in which books the ac-" counts of the owners of any stock, "annuities or other public funds "which now are or hereafter may "be transferable at the Bank of "bour, and with or without solita- "England or at the Bank of Ireland

"shall be entered and kept, or shall "in any manner wilfully falsify any " of the accounts of any such own-" ers in any of the said books, with " intent in any of the cases aforesaid "to defraud, or shall wilfully make " any transfer of any share or inter-"est of or in any stock, annuity or " other public fund which now is or "hereafter may be transferable at "the Bank of England or at the "Bank of Ireland, in the name of "any person not being the true and "lawful owner of such share or in-"terest, with intent to defraud, "shall be guilty of felony, and, be-"ing convicted thereof, shall be li-" able, at the discretion of the court, "to be kept in penal servitude for "life, or for any term not less than "five years (27 & 28 Vict. c. 47), " or to be imprisoned for any term "not exceeding two years, with or "without hard labour, and with "or without solitary confinement. (Former enactment, 11 Geo. 4 & 1 Will. 4, c. 66, s. 5.)

Companies. |—On an indict-In ment for forging and uttering a transfer of shares in a railway company, the register of shareholders bearing the seal of the company, and kept according to 8 & 9 Vict. c. 16, s. 9, is evidence to shew that an individual is a shareholder, without further authentication; and in order to prove that such individual is liable to be defrauded by the forging and uttering of a transfer of the shares, it is not necessary to give further proof of his title to the shares. Reg. v. Nash, 2 Den. C. C. 493; 16 Jur. 553; 21 L. J., M. C. 147.

Bank Dividend Warrants.]—By s. 6, "whosoever, being a clerk, offi"cer or servant of, or other person
"employed or intrusted by, the
"Bank of England or the Bank of
"Ireland, shall knowingly make
"out or deliver any dividend
"warrant, or warrant for payment
"exceeding the state of the stat

" of any annuity, interest or money " payable at the Bank of England "or Ireland, for a greater or less "amount than the person on whose " behalf such warrant shall be made "out is entitled to, with intent to "defraud, shall be guilty of felony, "and, being convicted thereof, "shall be liable, at the discretion of "the court, to be kept in penal serv-"itude for any term not exceed-"ing seven years, and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, " with or without hard labour, and "with or without solitary confine-ment." (Former provision, 11 "Geo. 4 & 1 Will. 4, c. 66, s. 9.)

(t) Warrants, Orders, Undertakings, Requests and Receipts for Goods or for Money.

Statute. |-By 24 & 25 Vict. c. 98, s. 23, "whosoever shall forge or al-"ter, or shall offer, utter, dispose "of or put off, knowing the same "to be forged or altered, any under-"taking, warrant, order, authority "or request for the payment of "money, or for the delivery or trans-" fer of any goods or chattels, or of "any note, bill or other security for "the payment of money, or for pro-" curing or giving credit, or any in-"dorsement on or assignment of "any such undertaking, warrant, " order, authority or request, or any "accountable receipt, acquittance " or receipt for money or for goods, " or for any note, bill or other secu-"rity for the payment of money, or "any indorsement on or assignment "of any such accountable receipt, "with intent, in any of the cases "aforesaid, to defraud, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-

" out hard labour, and with or with-"out solitary confinement." (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, ss. 3, 10.)

By s. 24, "whosever, with intent " to defraud, shall draw, make, sign, "accept or indorse any bill of ex-"change or promissory note, or any " undertaking, warrant, order, au-"thority or request, for the pay-"ment of money, or for the deliv-"ery or transfer of goods or chat-"tels, or of any bill, note or other "security for money, by procura-"tion or otherwise, for, in the name "or on the account of any other "person, without lawful authority " or excuse, or shall offer, utter, dis-" pose of or put off any such bill, " note, undertaking, warrant, order, "authority or request so drawn, "made, signed, accepted or in-"dorsed by procuration or other-"wise, without lawful authority or "excuse, as aforesaid, knowing the " same to have been so drawn, made, "signed, accepted or indorsed as "aforesaid, shall be guilty of fel-"ony, and being convicted thereof "shall be liable, at the discretion "of the court, to be kept in penal " servitude for any term not exceed-"ing fourteen years and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, " with or without hard labour, and "with or without solitary confine-" ment."

Orders for the Delivery of Goods. -A forged order for the delivery of goods was not within 7 Geo. 2, c. 22, unless directed to the person who had the goods. Rex v. Clinch, 1 Leach, C. Č. 540; 2 East, P. C. 938.

In a case of forging an order, the order charged as forged must import that the person making it has a disposing power over the subject of the order, or there ought to be proof that the person in whose name it was made had such power. Rex v. Baker, 1 M. C. C. 231.

A note, in a name of an overseer of the poor, to a shopkeeper, desiring him to let the prisoner have certain goods, which he would see him paid for, was not a warrant or an order for the delivery of goods within 7 Geo. 2, c. 22. Rex v. Mitchell, 2 East, P. C. 936.

A forged order on a tradesman, in the name of a customer, requesting that the goods mentioned in it might be delivered to the bearer, was not within 7 Geo. 2, c. 22, if the customer had no interest in the goods mentioned. Rex v. Williams, 1 Leach, C. C. 114; 2 East, P. C. 937.

A prisoner convicted on or confessing to an indictment for uttering a forged order, ought not to have judgment passed, if it appears that the person whose name is forged had no authority to order, and the writing merely purports to be a request. Reg. v. Newton, 2 M. C. C. 59.

Forging an order in the name of a silversmith for the re-delivery of plate from Goldsmiths' Hall, viz. "Please to deliver my work to the bearer," was within 7 Geo. 2, c. 22, and 13 Geo. 3, c. 26. Rex v. Jones; 1 Leach, C. C. 53; 2 East, C. C.

An order to taste wine in the London Docks, is an order for the delivery of goods, the forgery of which is a felony. Reg. v. Illidge, 2 C. & K. 871; T. & M. 127; 13 Jur. 543; 18 L. J., M. C. 179; 3 Cox, C. C. 552.

At the London Docks, a person bringing a tasting order from a merchant having wine there is not allowed to taste till the order has the signature of a clerk of the company across it. A. uttered a tasting-order, with the merchant's name forged to it, by presenting it to the company's clerk for his signature across it. The clerk refused

to sign it:—Held, that in this state the order was a forged order for

the delivery of goods. Ib.

A document in the following form, "W. Trim, 2s.," is neither a warrant for the payment of money, nor a request for the delivery of goods within 11 Geo. 4 & 1 Will. 4, c. 66, ss. 3, 10, and cannot be shewn to be so by parol evidence. Reg. v. Ellis, 4 Cox, C. C. 258.

On an indictment for forging and uttering an accountable receipt for goods, the following document was held to be an accountable receipt: "By order of R. F. Pries, we have this day transferred into the name of Messrs. Collman and Stolterfoht, 759 quarters and 4 bushels of wheat, ex-August Ferdinand, Captain Richards, a Neustadt. tered by R. F. Pries, and now lying at our granaries, Bermondseywall. The wheat is insured against risk of fire by us. - Brown and Young, Corn Exchange, Oct. 23, 1852," Reg. v. Pries, 6 Cox, C. C. 165.

If the course of dealing between A. and B. is, that A. shall write persons' names in a list with a sum against each name, on sight of which B. is to furnish goods on the credit of A. to each person whose name is on the list to the amount set against his name, such list is a request for the delivery of goods, and the fraudulent alteration of one of the sums in it is indictable as a forgery. Reg. v. Walters, Car. & M. 588—Ludlow, Serjt.

An indictment charged the prisoner with uttering, knowing the same to be forged, a warrant order and request for the delivery of goods in the words and figures following: "Mr. B.,—Please send by bearer a quantity of basket nails, a clasp-E.L." It was proved that E. L. was a customer of B.'s, and had employed the prisoner in his service, and that the prisoner had delivered to B. a paper, as set forth in the indictment, which was a forg- | as follows:--" Please to let W. T.

ery of E. L.'s handwriting. prisoner was convicted. On a case reserved, it was objected that the paper, being only a request, did not support the indictment, which described it as a warrant order and request:—Held, that there was no variance, as the document being set out in hæc verba in the indictment, the description of it therein became immaterial. Reg. v. Williams, T. & M. 382; 2 Den. C. C. 61; 14 Jur. 1052; 20 L. J., M. C. 106.

Requests for the Delivery of Goods.] — A forged paper in the following form :—"Per bearer, two 11-4 superior counterpanes. Davis, E. Twell." It was not addressed to any person, is neither an order nor a request within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. Rex v. Cullen, 5 C. & P. 116; 1 M. C. C. 300.

But a request for the delivery of goods need not be addressed to any Rex v. Carney, 1 M. C. C. 351.

A paper in the following form is a request for the delivery of goods, though not addressed to any one: - "August 3, 1839 — one 16-in. helmet scoop, one 4-qt. kettle—Jas. Hayward." Reg. v. Pulbrook, 9 C. & P. 37—Denman.

A person who obtained goods on delivering a forged letter—" Please to let the bearer, W. T., have for J. R. four yards of linen," signed J. R., was not indictable for obtaining goods by false pretence, as this was uttering a forged request for the delivery of goods, which was a felony under 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. Rex v. Evans, 5 C. & P. 553—Taunton.

The prisoner represented that M. C. was dead, and had left him 50l. or 60*l*., and it was in the hands of A. D., and that he wanted mourning. He brought a forged paper, purporting to be signed by A. D.,

have such things as he wants for the purpose. Sir, I have got the amount of 27l. for M. C. in my keeping these many years ":-Held, that this was a forged request for the delivery of goods. Rex v. Thomas, 7 C. & P. 851; 2 M. C. C. 16.

A forged paper addressed to a tradesman, and purporting to be signed by one of his customers, in the following form :- "Please to let bearer, William Goff, have spillshovel and grafting tool for me," is a forged request for the delivery of goods. Reg. v. James, 8 C. & P. 292—Gurney.

A forged paper in the following form :--" Please to let the lad have a hat, and I will answer for the money—E. B.," is a forged request

for the delivery of goods, and is not the less so because it may also be a forged undertaking for the payment of money. Reg. v. White, 9 C. &

P. 282—Gurney.

Where the prisoner signed a document which entitled him to receive a delivery note, which, in the course of business of a canal company, would enable him to demand and have the goods described therein delivered to him on payment of the charges for carriage:—Held, a forgery of a receipt for goods. Reg. v. Meigh, 7 Cox, C. C. 401-Wightman.

Evidence of Uttering. ] - On a charge of uttering an order or a request for the delivery of goods, proof of the receipt of goods by the prisoner is no evidence of the Reg. v. Johnson, 6 utterance. Cox, C. C. 18—Wightman.

Orders and Warrants for the Payment of Money.]—The words "warrant" or "order," in 7 Geo. 2, c. 22, were synonymous. Rex v. Mitchell, 2 East, P. C. 936.

A bill of exchange or a banker's draft might have been charged in

an order for payment of money. Rex v. Willoughby, 2 East, P. C. 944; S. P. Rex v. Shepherd, 2 East, P. C. 944; 1 Leach, 226. A note—" Please to send 10l. by

bearer, as I am so ill I cannot wait on you,"--was not an order for the payment of money within 7 Geo. 2, c. 22. Rex v. Ellor, 1 Leach, C. C. 323; 2 East, P. C. 937.

The prisoner drew a bill, — "Please to pay the bearer on demand 151.,—and signed it with his own name, but it was not addressed to any one; there were forged upon this instrument, when uttered, the words and signature, "Payable at Messrs. Masterman & Co., White Hart Court. Wm. M'Inerheney." M'Inerheney kept cash at Masterman & Co.'s:—Held, that this was not an order for payment of money. Rex v. Ravenscroft, R. & R. C. C. 161.

Indictment for forging an order for payment of money. The instrument was an order to pay prisoner or order the sum of four pounds five shillings, being month's advance on an intended voyage to Quebec, in the ship Mary Ann, as per agreement with G. M., The prisoner had in the master. margin of the order written, "on receiving this cheque I agree to sail, and to be on board within sixteen hours from the date of this cheque":-Held, a good order for payment of money within the 11 Geo. 4 & 1 Will. 4, c. 66, s. 3. Rex v. Bamfield, 1 M. C. C. 416.

It is no defence on an indictment for forging and uttering an order of a board of guardians of a Poor-law Union, to shew that the person who signed the order as presiding chairman was not, in fact, chairman on the day he signed, the forgery charged being of another name in the order. Reg. v. Pike, 2 M. C. C. 70; 3 Jur. 27.

An order for the payment of prize-money, signed in the name of an indictment on 7 Geo. 2, c. 22, as | a seaman, was an order for payment of money, or bill of exchange within 7 Geo. 2, c. 22, the forgery of which was felony, although the requisites of 32 Geo. 3, c. 34, s. 2, had not been complied with. Reav. MacIntosh, 2 East, P. C. 942, 956; 2 Leach, C. C. 883.

The prisoner drew a bill upon the treasurer of the navy payable to —— or order, and signed it in the name of a navy surgeon:—Held, that to constitute an order for payment of money there must be some payee; a direction to pay —— or order is not sufficient. Rew v. Rich-

ards, R. & R. C. C. 193.

A prisoner was indicted for forging an order for the payment of money, with intent to defraud "H. D., as one of the public officers of The instruthe Y. district bank." ment was as follows: -- "Thorntonle-Moor, July 20, 1844. Mr. J., Sir, Please to pay James Jackson 131., by order of Christopher Sadler, Thornton-le-Moor, brewer. The District Bank. I shall see you on Monday. Yours, obliged, Charles Sadler ": - Held, to be an order within 11 Geo. 4 & 1 Will. 4, c. 66, s. 3. Reg. v. Carter, 1 Den. C. C. 65; 1 C. & K. 741.

A person who knowingly utters a forged pass of a discharged prisoner, purporting to have been given under 5 Geo. 4, c. 85, may be convicted of uttering a forged warrant and order for the payment of money, although the forged pass be not precisely in the form given by that statute, and although it does not purport to be sealed with the county seal, or any seal provided for the purpose, the only seal to it being two small pieces of paper af-Reg. v.fixed to it by wafers. M' Connell, 1.C. & K. 371; 2 M. C. C. 298.

A woman who applies to a relieving officer for money on such a false pass, and produces it to him, may be convicted of uttering a forged warrant and order for the payment of money, as, if genuine, it would have been a warrant from Luke Lade to the bankers to pay the money to J. S. Reg. v. Smith, 1 payment of money, although the C. & K. 700; 1 Den. C. C. 79.

forged pass direct the money mentioned in it to be paid to "William Henry," on his giving a receipt. Ih

A writing, purporting to authorize the bearer to receive money deposited in a bank by a friendly society on accountable receipts, and purporting to be signed by the principal officers of the society, may, in an indictment for forgery, be alleged to be a warrant for the payment of money. Reg. v. Harris, 2 M. C. C. 267; 1 C. & K. 179.

An indictment for forging an order for the payment of money is not sustained by a forged letter requesting a person, with whom the supposed writer had dealings, to pay money, the balance being at the time against the writer. Reg. v. Roberts, 2 M. C. C. 258; Car. & M. 652.

"Three days after the ship Selah has sailed from the port of Sunderland, please to pay to John Wilson, or bearer, the sum of four pounds 0 shillings and 0 pence (provided the said John Wilson has actually sailed in the said ship), being part of his wages in advance, on her intended voyage to Alexandria.—John Robson, Master. To Mr. John Stobart, owner of ship," is an order for payment of money. Reg. v. Lonsdale, 2 Cox, C. 222—Alderson and Rolfe.

A forged paper was in the following form: — "To M. & Co. Pay to my order, two months after date, to Mr. J. S., 80l., and deduct the same out of my account." It was not signed, but across it was written, "Accepted, Luke Lade"; and at the back the name and address of J. S. M. & Co. were bankers, and Luke Lade kept cash with them: —Held, that this paper was a warrant for the payment of money, as, if genuine, it would have been a warrant from Luke Lade to the bankers to pay the money to J. S. Reg. v. Smith, 1 C. & K. 700; 1 Den. C. C. 79.

"Mr. M. will be pleased to send by the bearer 10l. on Mr. H.'s account, as Mr. H. is very bad in bed, and cannot come himself," and the paper purported to be signed, "Mr. R., foreman, St. A. Foundry," and Mr. M. was clerk to Messrs. C., bankers, with whom Mr. H. kept an account, and R. was foreman to Mr. H., but had no authority to draw on Mr. H.'s banker, is a warrant for the payment of money. Reg. v. Vivian, 1 C. & K. 719; 1 Den. C. C. 35.

Any instrument for payment, under which, if genuine, the payer may recover the amount against the party signing it, may be properly considered a warrant for the payment of money; and it is equally this, whatever be the state of the account between the parties, and whether the party signing it has, at the time, funds in the hands of the party to whom it is addressed. *Ib*.

An instrument in the following form: "Please to pay T. E. Turberville 3l. 12s. 6d. for sick-pay to Brother Isaac Jones," and signed by the officers of a friendly society, and directed to the treasurer, is, on the face of it, an order within 11 Geo. 4 & 1 Will. 4, c. 64, s. 3; and may be shewn by evidence to be a warrant for the payment of money. Where a prisoner was charged with forging the above instrument, and some counts of the indictment laid the intent to be to defraud "J. C. and others," by virtue of 11 Geo. 4 & 1 Will. 4, c. 66, s. 28, and it appeared that the prisoner and J. C. and others were members of this society:-Held, that the word "others" might be held to include or exclude the prisoner, according as it was necessary, for the support of the indictment, that his name should be considered as included or excluded. Other counts of the indictment laid the intent to be to defraud W. R.: Held, that this intent was supported by proof that W.R. was the treasurer

course of business and his duty to pay money, on having genuine orders or warrants for that purpose in the above form. Reg. v. Turberville, 4 Cox, C. C. 13—Erle.

A. kept a deposit account, but not a drawing account, with B., a banker, and was not entitled to draw cheques on B. C. presented a forged cheque of A. on B., which B. paid:—Held, that this was a forged warrant for the payment of money, but not a forged order; as A. had, by the course of dealing between him and B., no right to draw cheques on B. Reg. v. Williams, 2 C. & K. 51—Wightman.

A post-dated cheque is an order for the payment of money. Reg. v. Taylor, 1 C. & K. 213—Cresswell.

A sailor's shipping note for 2l. 15s., payable to A. or bearer, five days after the ship shall sail, is not a void instrument under 17 Geo. 3, c. 30, but is an undertaking, warrant or order for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66, s. 3. Reg. v. Anderson, 2 M. & Rob. 469—Parke.

But a warrant for wages, signed by a foreman and paid by a cashier, is not a warrant for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. Reg. v. Pilling, 1 F. & F. 324—Bramwell.

A certificate in the following form: "I hereby certify that the within-named William Michell is gaining his living by hawking," the production of which was necessary, in order that the prisoner might obtain payment of a sum of money to which he was entitled, is not an undertaking, warrant or order for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66. Reg. v. Mitchell, 2 F. & F. 44—Williams.

For forging such a certificate the prisoner must be indicted for a forgery at common law. *Ib*.

the intent to be to defraud W.R.:—
Held, that this intent was supported by proof that W.R. was the treasurer of the society, and that it was the C. Dawson, English and foreign

fruit-merchant and potato salesman. Nov. 9th, two bushels of apples, 9s. Sir,—I hope you will excuse me sending for such a trifle, but I have received a lawyer's letter this morning, and unless I can make up a certain amount by one o'clock, there will be an action commenced against me, and I am obliged to hunt after every shilling. &c., F. Dawson' :- Held, that this was properly described as a warrant for the payment of money. Reg. v.Dawson, T. & M. 428; 2 Den. C. C. 75; 15 Jur. 159; 20 L. J., M. C. 102; 5 Cox, C. C. 220.

A forged order for the payment of money needs not disclose on the face of it the name of the party to whom it is addressed, but the direction may be shewn by extrinsic evidence. Reg. v. Snelling, Dears. C. C. 219; 17 Jur. 1012; 2 C. L. R. 114; 23 L. J., M. C. 8; 6 Cox, C. C. 230.

An instrument professing to be a scrip certificate of a railway company, was not an undertaking for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66. Reg. v. West, 1 Den. C. C. 258; 2 C. & K. 496; S. P., Clark v. Newsam, 5 Railw. Cas. 69; 1 Exch. 131; 16 L. J., Exch. 296.

A dividend warrant of a railway company, signed by the secretary, and addressed to a banker, required the latter to pay the amount to L. (a shareholder) or order, and to charge the same to the company's revenue account. It further required the shareholder's name to be indorsed, and the banker would not pay the money without such in-The prisoner uttered dorsement. this dividend warrant, knowing that the indorsement of the shareholder's name was a forgery, and hé was convicted upon an indictment which charged him in one count with uttering a warrant for the payment of money, and in another with uttering an order for the

payment of money:—Held, that the document was properly described. Reg. v. Autey, Dears. & B. C. C. 294; 3 Jur., N. S. 697; 26 L. J., M. C. 190; 7 Cox, C. C. 329.

Receipts.]—After a receipt was signed by the person giving it, the person to whom it was given added words above the signature:—Held, that it was for the jury to say whether the addition of those words altered the effect of the receipt. Reg. v. Milton, 10 Cox, C. C. 364—Chambers, C. S.

Held, also, that it was doubtful whether such addition amounted to a forgery. *Ib*.

Post-Office Money Orders.]—A post-office money order purporting to be signed by a local postmaster, and addressed to the Post-office, London, in the following form, "Credit the person named in my letter of advice the sum of 51., and debit the same to this office," is both a warrant and an order for the payment of money. Reg. v. Gilchrist, Car. & M. 224; 2 M. C. C. 233.

V. was indicted for uttering forged orders for the payment of money, and convicted. He had fraudulently obtained certain forms of post-office orders from the office at A., and also some with the N. stamp affixed. These orders being filled up, and signed "G. J., pro postmaster," there being no one of the name of G. J. at N., were uttered by V. in payment for goods at D. No letters of advice were forwarded to D.:—Held, that V. was rightly convicted. Reg. v. Vanderstein, 16 Ir. C. L. R. 574; 10 Cox, C. C. 177—Ir. C. C. R.

Letters of Credit.]—A letter of credit, on which the correspondents of the writer of it, having funds of his in their possession, apply them to the use of the party in whose fa-

vour it is given, is a warrant for the payment of money. Reg. v. Raake, 8 C. & P. 626; 2 M. C. C. 66.

An indorsement on a letter of credit is not an order, as not being within the original mandate. Reg. v. Wilton, 1 F. & F. 391—Bramwell.

Undertakings for the Payment of Money.]—A guarantie is the subject of forgery, though no consideration appears, and 19 & 20 Vict. c. 97, s. 3, gives validity to such an undertaking. Reg. v. Coelho, 9 Cox, C. C. 8.

Indictment under 11 Geo. 4 & 1 Will. 4, c. 66, s. 3, for uttering a forged undertaking for the payment of money:—Held, that the statute applied as well to a written promise for the payment of money by a third person as to a like promise of payment by the supposed party to the instrument. Reg. v. Stone, 1 Den. C. C. 181; 2 C. & K. 364.

A forged instrument, by which the supposed maker of it, in consideration of goods to be sold to P., undertakes to guarantee to the vendor the due payment for all such goods so to be sold to P., but so that the supposed maker should not be liable beyond 10*l*., is a forged undertaking for the payment of money. *Ib*.

Forging a document purporting to guarantee a master to a certain amount in money against the dishonesty of a clerk, is forging an undertaking for the payment of money within 24 & 25 Vict. c. 98, s. 23. Reg. v. Joyce, 10 Cox, C. C. 100; L. & C. 576; 11 Jur., N. S. 472; 34 L. J., M. C. 168; 13 W. R. 662; 12 L. T., N. S. 351.

The forging of a paper, by which the supposed writer promises to pay B., or order, 100*l.*, or such other sum, not exceeding the same, as he may incur by reason of his becoming one of the sureties to the sheriff of Y., for J. R., a sheriff's officer, is a forgery of an undertaking for the

payment of money. Reg. v. Reed, 8 C. & P. 623; 2 Lewin, C. C. 185.

Requests for the Payment of Money.]—Before the 24 & 25 Vict. c. 98, s. 24, a forged request to pay a third person money on account of the supposed writer would not sustain an indictment for forgery, describing it either as an undertaking, warrant or order for the payment of money. Reg. v. Thorn, 2 M. C. C. 210; Car. & M. 206.

A customer in the country had an account open with a wholesale house in London; a letter purporting to come from him was delivered at their place of business; it was in the following form :- "I shall feel obliged by your paying Mr. B. 2l. 7s. 8d., and debiting me with the You will please have a receipt, and add the amount to invoice of order on hand." It appeared to be the practice of the house in London to pay country customers on requests of a similar description. The party who sent it by an innocent agent, and obtained the money on it, was indicted for forging and uttering it. The instrument was described in the indictment as an undertaking, a warrant and an order, each for the payment of 2l. 7s. 8d.The prisoner having been convicted of uttering, the judges held the conviction wrong, as the instrument was neither an undertaking, a warrant, nor an order.

It was not an offence, under 11 Geo. 4 & 1 Will. 4, c. 66, to forge an indorsement upon a warrant or order for the payment of money; nor if a party wrote on the back of a bill of exchange payable to R. A., "Received for R. A.," and signed his own name to it, was he guilty of forging a receipt. Rex v. Arscott, 6 C. & P. 408—Littledale, Vanghan and Bolland. But see 24 & 25 Vict. c. 98, s. 24.

of Y., for J. R., a sheriff's officer, is a forgery of an undertaking for the ey.]—A person makes a copy of a

receipt, and adds to it other words, as, for example, "in full of all demands," which were not in the original; it is a forgery, if the copy is offered in evidence on the supposed loss of the original. Upfold v. Leit, 5 Esp. 100—Ellenborough.

A stamped memorandum, importing that A. B. had paid a sum of money to C. D., but not importing any acknowledgement from C. D. of his having received it, was not such a receipt as 2 Geo. 2, c. 25, s. 1, made it capital to forge or utter. Rex v. Harvey, R. & R. C. C. 227.

An entry of the receipt of money or notes made by a cashier of the Bank of England in the bank book of a creditor was an accountable receipt for the payment of money within 7 Geo. 2, c. 22. Rex v. Harrison, 1 Leach, C. C. 180; 2 East, P. C. 927, 988.

Forging an indenture of apprenticeship and a receipt for the apprenticeship fee, with intent to defraud the stewards of the Feast of the Sons of the Clergy, was forgery. Rex v. Jones, 1 Leach, C. C. 366; 2 East, P. C. 991.

The name of the holder of a navy bill, signed on a proper receipt stamp, and affixed to the navy bill, did not on the face of it purport to be a receipt for money within 2 Geo. 2, c. 25, and 7 Geo. 2, c. 22; but as the money was paid on such signature, and it always had been considered as a receipt at the Navy Office, it might, by proper averments in the indictment, be brought within the protection of the statutes as a receipt for money. Rex v. Hunter, 2 Leach, C. C. 624; 2 East, P. C. 928, 977.

If a person, employed by the executors of a public accountant to settle the account of the testator with government, procure fabricated vouchers, and deliver them to the Navy Board, in order to exonerate the estate of the testator from an extent, it was a forging and uttering within 2 Geo. 2, c. 25. Rex | the artillery, obtained from the

v. Thomas, 2 Leach, C. C. 877; 2 East, P. C. 934.

A scrip receipt not filled up with the name of the subscriber is not a receipt for money within the statutes against forgery. Rex v. Lyon, 2 Leach, C. C. 597; 2 East, P. C. 933.

A servant employed by her mistress to pay tradesmen's bills, received from her a bill of a tradesman named Sadler, together with the money to pay that and other bills. She brought the bill again to her mistress, with the words "paid Sadler" on it, the word Sadler being written with a small s, and there being no initial of the christian name of the tradesman. mistress stated that she believed the words to be a receipt and that no application was made for the money afterwards:—Held, on an indictment for forgery, that the words "paid Sadler," under the circumstances, imported a receipt or an acquittance for the money, and was not merely a memorandum by the servant of her having paid the Reg. v. Houseman, 8 C. & P. 180—Denman.

If a high constable issues his receipt for the payment of a county rate amounting to 3l. 5s. 9d., and having received the money, writes a receipt at the bottom of the paper, "Received the above rate, J. P.," and after that, the sum 3l. 5s. 9d.in the receipt is fraudulently altered to 3l. 15s. 9d.; this is a forgery of a receipt within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, and may be laid with intent to defraud any rated inhabitant (by name) of the parish on which the rate is imposed (and others). Reg. v. Vaughan, 8 C. & P. 276—Gurney.

"Settled, The words Samuel Hughes," at the foot of a bill of parcels, import a receipt and an acquittance. Rex v. Martin, 7 C. & P. 549; 1 M. C. C. 483.

The prisoner, a pay-serjeant of

paymaster a receipt for a sum of money as part of subsistence of a company for the month of May. He afterwards erased May and inserted June, and gave the receipt to a tradesman, who, according to the usual practice, advanced the sum to the prisoner, and sent the receipt to the agent of the regiment, who paid the amount. The indictment for forgery, describing the instrument as a receipt, was good. Rex v. Hope, 1 M. C. C. 414.

The provisions of the 7 Geo. 4, c. 16, s. 38, extend to the forging and uttering a receipt, or other document, relating to a Chelsea pension, supposed to be payable, and are not confined to cases of forging and uttering receipts and other documents relating to pensions in actual existence. Reg. v. Pringle, 9 C. & P.

408; 2 M. C. C. 127.

An instrument purporting to be an agreement, and stamped as such, and reciting that an arrangement had been made between the parties thereto in consideration of a certain sum, the receipt of which was thereby acknowledged, and then proceeding to release the party paying it from all further claim in the matter in respect of which it was paid, is a receipt or an acquittance under 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, and may be so described in an indictment for forgery. Reg. v. Hill, 2 Cox, C. C. 246.

Where it was shewn to be the custom of bankers to give receipts on the deposit of money in the following form:—"Received of A. eighty-five pounds to his credit. This receipt not transferable"; and to repay the money with interest on the return of this receipt, with A.'s name written on it:—Held, that forging the name of A., and receiving the money due on its return, was a forging and uttering an acquittance for 85l. Reg. v. Atkinson, 2 M. C. C. 215; Car. & M. 325.

It was the practice of the treasurer of a county, when an order had

been made on him for the payment of expenses of a prosecution, to pay the whole amount to the attorney for the prosecution, or his clerk, and to require the signature of every person named in the order to be written on the back of it, and opposite to each name the sum ordered to be paid to each person:—Held, that such a signature is not a receipt, the forging of which is an offence against 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, and that it is merely an authority to the treasurer to pay the amount. Reg. v. Cooper, 2 C. & K. 586—Erle.

A scrip certificate in a railway company is not an accountable receipt, or an acquittance or a receipt within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10; therefore the forgery of such a document is not a felony, but a misdemeanor only. Clark v. Newsam, 1 Exch. 131; 5 Railw. Cas. 69; 16 L. J., Exch. 296; S. P. Reg. v. West. 1 Den. C. C. 258; 2 C. & K. 496; 2 Cox, C. C. 437.

A turnpike toll-gate ticket is a receipt for money within 24 & 25 Vict. c. 98, s. 23. Reg. v. Fitch, L. & C. 159; 9 Cox, C. C. 160; 8 Jur., N. S. 624; 10 W. R. 489; 6 L. T., N. S. 256.

The prisoner was a collector of rates for a corporation. While in the service he received cash from the prosecutor on account of a rate, for which he gave a receipt. After he had left the service, he called on the prosecutor for the balance, which was paid, and for a receipt. The prisoner altered the figures in the former receipt, which then appeared as a receipt for the entire rate due:

—Held, not to be a forgery. Reg. v. Sargent, 10 Cox, C. C. 161—Pigott.

Uttering Receipts.]—A. applied to B. to lend him money, and gave him the name of the defendant as a surety. B. went to him, and, to satisfy himself of his respectability, asked to see his receipts for rent

and taxes. The defendant placed in the hands of B., for his inspection, three documents purporting to be receipts for poor rates, with the intent to induce B. to advance money to A. One of these receipts was forged. B. inspected the documents, and then returned them to the defendant:—Held, that the defendant might be convicted of uttering a forged, receipt, and that, for the purpose of rendering him liable, it was not necessary that the receipt should be used to get credit upon it by its operating as a receipt, but that it was sufficient if he used it fraudulently to obtain money by means of it. Reg. v. Ion, 6 Cox, C. C. 1; 2 Den. C. C. 475.

Held, also, that it was immaterial whether the money to be obtained by means of it was for himself or for

any other person. *Ib.*:

The prisoner, servant of A., applied to B. for payment of 17s. due from B. to A. B. refused to pay it without A.'s receipt. The prisoner went away and returned with a document, as follows:—"Received from Mr. Bendon, due to Mr. Warman, 17s. Settled." Whereupon B. paid the debt:—Held, a question for the jury whether the prisoner tendered the receipt as the handwriting of A., which would make him liable on this indictment; or as his own, which would make his act a false pretence. Reg. v. Inder, 1 Den. C. C. 325; 2 C. & K. 635.

A. was treasurer of an unenrolled friendly society, and it was his duty to receive contributions from the members, and pay them into a bank in his own name for the benefit of the society. At meetings of the society he produced to the members a fictitious pass-book, purporting to vouch for the payment of monies by him into the bank. This book did not truly represent the state of the account between himself and He also at various the bank. times drew out monies which he had paid in, and appropriated them

to his own use. He was convicted upon an indictment which charged him with uttering a receipt for money, the jury finding that he presented a false account, with intent thereby to obtain credit for having duly paid into the bank the various sums which he had received, and to be continued in his office of treasurer with a view to obtain other monies from the society, which he might fraudulently appropriate to his own use :--Held, that the conviction was right. Reg. v. Smith. 9 Cox, C. C. 162; L. & C. 168; 8 Jur., N. S. 572; 31 L. J., M. C. 154; 10 W. R. 583; 6 L. T., N. S. 300.

A paid secretary of an unenrolled friendly society, of which his wife was a member, was directed by the society to pay into a savings bank 40l., given him for that purpose. At the next meeting he handed in a book, indorsed "Savings Bank, Newstreet, Huddersfield," and on which was written, "1865, Oct. 30, received 40l." The indorsement on and entry in the book were forgeries, and the money had not been paid into the bank. He was convicted of uttering this document, knowing it to be forged :-Held, that the conviction was right. Reg. v. Moody,L. & C. 173; 9 Cox, C. C. 166; 8 Jur., N. S., 574; 31 L. J., M. C. 156; 10 W. R. 585; 6 L. T., N. S. 301.

It being the duty of a railway. station-master to pay B. for delivering and collecting parcels, he falsely told B. that the company had determined to pay him only for collecting, and not for delivering, and accordingly then continued to pay him only for collecting, but he continued to charge the company with payments purporting to be made to B. for delivering. In order to furnish a voucher to the company for these pretended payments, the station-master, after paying B.'s servant the sum entered under the head "collecting," in the printed form supplied by the company, and obtaining his receipt in writing for that amount, without his or B.'s knowledge, put a receipt stamp under the servant's name, and wrote thereon in figures a sum, being the aggregate for collecting and delivering:

—Held, that he was properly convicted of forgery. Reg. v. Griffiths, Dears. & B. C. C. 548; 4 Jur., N. S. 442; 27 L. J., M. C. 205; 7 Cox, C. C. 501.

Receipts for Goods.]—A pawn-broker's duplicate of goods pledged with him is an accountable receipt for goods. Reg. v. Fitchie, Dears. & B. C. C. 175; 3 Jur., N. S. 419; 26 L. J., M. C. 90; 7 Cox, C. C. 257.

### (u) Wills.

By 24 & 25 Vict e. 98, s. 21, " whosoever, with intent to defraud, "shall forge or alter, or shall offer, " utter, dispose of, or put off, know-"ing the same to be forged or alter-"ed, any will, testament, codicil or " testamentary instrument, shall be "guilty of felony, and being con-"vieted thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than five " years (27 & 28 Viet. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-" out hard labour, and with or with-"out solitary confinement." ilar to 11 Geo. 4 & 1 Will. 4, c. 66, s. 3.)

Before 7 Will. 4 & 1 Vict. c. 26, s. 9, there could be no forgery of a will of lands, attested only by two witnesses. Rex v. Wall, 2 East, P. C. 953.

To forge a will was a capital offence, although the supposed testator was living. Rex v. Sterling, 1 Leach, C. C. 99; 2 East, P. C. 950; S. P. Rex v. Coogan, 1 Leach, C. C. 449; 2 East, P. C. 1001.

The forgery of the will of a nonexisting person is an offence within the statute. Reg. v. Avery, 8 C. & P. 596—Patteson.

A., an attorney, was employed by B., as his solicitor, to put out money upon mortgage. C. applied to A. to procure him the advance of money on mortgage, and to act as his solicitor in procuring it. C. stated to A. that he was the owner of eertain freehold lands, and produced a forged will in proof of his title, which he placed in the hands of A. B. advanced the money, A. acting as his solicitor, by preparing the mortgage-deeds:—Held, that, the trial of C. for uttering the forged will, A. was bound to produce the will, and also to give evidence of what C. said to him as to the advance of the money. Ib.

On an indictment for forging a will, the probate of that will unrepealed is not conclusive evidence of its validity, so as to be a bar to the prosecution. Rev v. Battery, R. & R. C. C. 342; S. P. Rev v. Gibson, R. & R. C. C. 343, n.—Ellenbo-

rough.

In an indictment for forging a will, an intent to defraud the heirat-law was charged in one count, and in another an intent to defraud persons to the jurors unknown. The only one found guilty was the son of the testator, whose will was alleged to be forged. No evidence was given that the testator had been previously married, or left any other children, but one of the witnesses stated that he had heard a report that the deceased had left another son by a former wife:—Held, that there was no evidence of an intention to defraud any one, to justify a eonviction. Reg. v. Tylney, 1 Den. C. C. 319; 18 L. J., M. C. 36; S. C. nom. Reg. v. Tufts, 3 Cox, C. C. 160.

A forged will had been sent to an attorney with some title-deeds ostensibly for the purpose of asking his advice upon them, but really that he might see the will and act upon it. The will being produced at the trial by the attorney, the prisoner's counsel objected to the reading of it on the ground that it was a privileged communication, and the objection was overruled at the time, and afterwards on a case reserved. Reg. v. Hayward, 2 Cox, C. C. 23.

Signing a wrong christian name to the person whose will a false instrument purports to be, is a forgery. Rex v. Fitzgerald, 1 Leach, C. C.

20; 2 East, P. C. 953.

On an indictment for forging a seaman's will, the muster-book of the Navy-Office is good evidence to prove the identity of the supposed testator. Rex v. Rhodes, 1 Leach, C. C. 24; S. P. Rex v. Fitzgerald, 1 Leach, C. C. 20; 2 East, P. C. 953.

Three were jointly charged with procuring other persons to utter a forged will. The only evidence for the prosecution was of separate acts, at separate times and places, done by each of the persons charged as accessories. At the end of that evidence one of them pleaded guilty:—Held, that the other two might, notwithstanding, be convicted. Reg. v. Barber, 1 C. & K. 442—Gurney, Williams and Maule.

Upon the trial of an indictment for forging the will of one W., it was proved that the prisoner's wife, by his desire, took another will purporting to be the will of W., also forged, to a solicitor, and asked him to advance money on mortgage of the property which passed under the will of her father W.; that the will being left with the solicitor and discovered by him to be a forgery, he made an exact copy of it and then returned it to the prisoner. What the wife stated to the solicitor was afterwards communicated The solicitor stated to the prisoner. that he was not then acting as the prisoner's attorney, that he made no charge for the interview, but that

if he had found the security sufficient he should have advanced the money. Notice was given to the prisoner to produce that will, and upon its non-production the copy taken by the solicitor was tendered and received:—Held, that the interview between the solicitor and the prisoner's wife was not privileged as a confidential communication, and that the conversation which then took place, and the copy of the will, were both admissible. Reg. v.Farley, 2 Cox, C. C. 82; 2 C. & K. 313; 1 Den. C. C. 197.

(v) Instruments otherwise Designated.

By 24 & 25 Vict c. 98 s. 39, "where by this or by any other act "any person is or shall hereafter be "made liable to punishment for "forging or altering, or for offering, " uttering, disposing of, or putting " off, knowing the same to be forged " or altered, any instrument or writ-"ing designated in such act by any "special name or description, and "such instrument or writing, how-" ever designated, shall be in law a "will, testament, codicil, or testa-"mentary writing, or a deed, bond, "or writing obligatory, or a bill of "exchange, or a promissory note "for the payment of money, or an "indorsement on or assignment of a "bill of exchange or promissory "note for the payment of money, or "an acceptance of a bill of exchange, " or an undertaking, warrant, order, "authority, or request for the pay-"ment of money, or an indorsement " on or assignment of an undertak-"ing, warrant, order, authority, or "request for the payment of money, "within the true intent and mean-"ing of this act, in every such case "the person forging or altering such "instrument or writing, or offering, "uttering, disposing of, or putting "off such instrument or writing, " knowing the same to be forged or "altered, may be indicted as an of-"fender against this act, and pun"ished accordingly." (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 4.)

### 4. Obtaining Property upon Forged Instruments.

By 24 & 25 Vict. c. 98, s. 38, "whosoever, with intent to defraud, "shall demand, receive, or obtain, "or cause or procure to be deliver-"ed or paid to any person, or en-"deavor to receive or obtain, or to " cause or procure to be delivered or "paid to any person, any chattel, "money, security for money, or other " property whatsoever, under, upon, or by virtue of any forged or altered "instrument whatsoever, knowing "the same to be forged or altered, "or under, upon, or by virtue of "any probate or letters of adminis-"tration, knowing the will, testa-"ment, codicil, or testamentary " writing on which such probate or "letters of administration "have been obtained to have been "forged or altered, or knowing "such probate or letters of adminis-"tration to have been obtained by "any false oath, affirmation, or "affidavit, shall be guilty of felony, "and being convicted thereof shall " be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "fourteen years, and not less than "five years (27 & 28 Vict. c. 47), " or to be imprisoned for any term "not exceeding two years, with or " without hard labour, and with or " without solitary confinement." See Reg. v. Adams, 1 Den. C. C. 38.

#### Parties Indictable.

Principals and Accessories. ]—By 24 & 25 Vict. c. 98, s. 49, "in the "case of every felony punishable "under this act, every principal in "the second degree, and every ac-"cessory before the fact, shall be " punishable in the same manner as "the principal in the first degree is "by this act punishable; and every

"felony punishable under this act "shall on conviction be liable, at "the discretion of the court, to be "imprisoned for any term not ex-" ceeding two years, with or with-"out hard labour, and with " without solitary confinement; and " every person who shall aid, abet, "counsel, or procure the commis-" sion of any misdemeanor punisha-"ble under this act shall be liable "to be proceeded against, indicted, "and punished as a principal offend-

It is not sufficient to make a person a principal in uttering a forged note, that he came with the utterer to the town where it was uttered, went out with him from the inn at which they put up a little before he uttered it, and joined him again in the street, a short time after the uttering, and at some little distance from the place of uttering, and ran away when the utterer was apprehended. Rex v. Davis, R. & R. C. C. 113.

If a wife, by the incitement of her husband, knowingly uttered in his absence a forged order and certificate for the reception of prizemoney, under 43 Geo. 3, c. 123, they might be indicted together, she as a principal on the statute, and he as an accessory, before the fact, at common law. Rex v. Morris, 2 Leach, C. C. 1096.

Persons privy to the uttering of a forged note by previous concert with the utterer, but who were not present at the time of uttering, or so near as to be able to afford any aid or assistance, are not principals, but accessories before the fact. Rex v. Soares, R. & R. C. C. 25; 2 East, P. C. 974.

If several plan the uttering of a forged order for payment of money, and it is uttered accordingly by one in the absence of the others, the actual utterer is alone the principal. Rex v. Badcock, R. & R. C. C. 249.

If several combine to forge Bank "accessory after the fact to any of England notes, and each executes by himself a distinct part of the forgery, but they are not together when the notes are completed, they are nevertheless all guilty as principals. Rex v. Bingley, R. & R. C. C. 446.

If several make distinct parts of a forged instrument, each is a principal, though he does not know by whom the other parts are executed, and though it is finished by one alone in the absence of the others. Rex v. Kirkwood, 1 M. C. C. 304.

The makers of the paper and plate respectively, for the purpose of forging a note afterwards filled up by a third person, are principals in the forgery with that person, though each executed his part in the absence of the others, and without knowing by whom the other parts are executed. Rex v. Dade, 1 M. C. C. 307.

Persons not present, nor sufficiently near to give assistance at the time of uttering forged notes, are not principals, although they may be accessories before the fact. Rex v. Stewart, R. & R. C. C. 363.

Other Parties. —The prisoner was the paid secretary of an unenrolled friendly society, of which his wife was a member. He delivered to the society a book on which was endorsed "Savings Bank, street, Huddersfield," and in which was an entry, "1855, Oct. 30, received 40l." It was proved that the entry was a forgery, and that the money had not been paid into the savings-bank. The jury having found that the prisoner was guilty of knowingly uttering with intent to deceive the society, and that he had, in fact, defrauded it, it was objected for the prisoner that being the husband of a member he was a part-owner, and could not be made criminally liable for defrauding his co-owners, and also that the document was not the subject of forgery: -Held, that both objections were untenable, and that the conviction was right. Reg. v. Moody, 9 Cox, |

C. C. 166; L. & C. 173; 31 L. J., M. C. 156; 8 Jur., N. S. 574; 10 W. R. 585; 6 L. T., N. S. 301.

The prisoner was the treasurer, and also a member of an unenrolled friendly society, and it was his duty to pay monies received into the society's bankers. The prisoner produced to the society a fictitious book, purporting to be the bank pass-book, containing entries purporting to vouch that he had paid certain monies into the bank, and that the bank acknowledged the receipt of them, which book did not truly represent the state of account. The prisoner having at various times drawn out monies which he had appropriated for his own purpose, the jury found the prisoner guilty of presenting a false account with intent to obtain credit for having paid the monies into the bank,. with a view to obtain other monies from the society which he might fraudulently appropriate to his own prisoner. use : -Held, $_{
m that}$  $_{
m the}$ though a member of the society, might properly be convicted of uttering a forged receipt, with intent, &c. Reg. v. Smith, 9 Cox, C. C. 162; L. & C. 168; 8 Jur., N. S. 572; 31 L. J., M. C. 154; 10 W. R. 583; 6 L. T., N. S. 300.

#### 6. Indictment.

Describing Instrument.]—By 24 & 25 Vict. c. 98, s. 42, "in any in-"dictment for forging, altering, of-"fering, uttering, disposing or put-"ting off any instrument, it shall be "sufficient to describe such instrument by any name or designation "by which the same may be usually "known, or by the purport thereof," without setting out any copy or "fac-simile thereof, or otherwise "describing the same, or the value "thereof." (14 & 15 Vict. c. 100, s. 5, and 2 & 3 Will. 4, c. 123, s. 3, former enactments.)

And by s. 43, "in any indictment "for engraving or making the whole "or any part of any instrument, mat"ter or thing whatsoever, or for using | "or having the unlawful custody "or possession of any plate or oth-" er material upon which the whole "or any part of any instrument, "matter or thing whatsoever shall "have been engraved or made, or "for having the unlawful custody "or possession of any paper upon "which the whole or any part of "any instrument, matter or thing "whatsoever shall have been made " or printed, it shall be sufficient to "describe such instrument, matter " or thing by any name or designa-"tion by which the same may be "usually known, without setting "out any copy or fac-simile of the "whole or any part of such instru-"ment, matter or thing." (Similar to 14 & 15 Vict. c. 100, s. 6.)

General Points. —In an indictment, the words, "in manner and form following, that is to say," do not bind the party to recite the instrument verbatim, nor render a mere formal omission or mistake fatal. Rex v. May, 1 Dougl. 193.

If any part of a true instrument is altered, the indictment may lay it to be a forgery of the whole instrument. Rex v. Dawson, 2 East, P. C. 978; 1 Str. 19.

For every alteration of a true instrument makes it a forgery of the whole. Ib.

In an indictment for forgery, a description to a common intent of the person intended to be defrauded is sufficient. Rex v. Lovell, 1 Leach, C. C. 248; 2 East, P. C. 990.

In an indictment for forging, the words, "purporting to be a banknote," mean that the instrument upon the face of it appears to be a bank-note; and the want of such appearance cannot be supplied by the representation of the party uttering it. Rex v. Jones, 1 Leach, C. C. 204; 2 East, P. C. 883; 1 Dougl. 302.

of exchange directed to Ransom, Moreland and Hammersley, stating that it purported to be directed to George Lord Kinnaird, William Moreland and Thomas Hammersley, by the names and description of Ransom, Moreland and Hammersley, is bad; for the purport and tenor are repugnant. Rex v. Gilchrist, 2 Leach, C. C. 657; 2 East, P. C. 982.

Upon Bank Notes. —Where an indictment on 41 Geo. 3, c. 57, s. 2, stated that the prisoner knowingly and without any authority from a certain corporate company called, &c., had in his custody a certain plate on which was engraved part of a promissory note, purporting to be the promissory note of the company; and it appeared that this company carried on the business of bankers, although incorporated for a totally different purpose:—Held, that the indictment was bad, having omitted to aver that the company "carried on the business of bankers." Rex v. Catapodi, R. & R. C. C. 65.

A bank post-bill cannot, in an indictment for forging and uttering, be described as a bill of exchange; but it may be described as a bank bill of exchange. Rex v. Birkett, R. & R. C. C. 251.

Upon Bills and Notes.]—A count charging a prisoner with uttering a forged bill, with intent to defraud A., and setting out the bill with the acceptance upon it, is not supported by proving that the prisoner uttered the bill, and that the acceptance on it was a forgery. Rex v. Horwell, 6 C. & P. 148; 1 M. C. C. 405.

An indictment, charging that the defendant, having in his possession a bill of exchange, purporting to be directed to one J. King, by the name and description of J. Ring, forged the acceptance of the An indictment for forging a bill said J. King, is bad, because the

word "purport" means what appears on the face of the instrument. and the bill did not purport to be drawn on J. King. Rex v. Read-

ing, 1 East, 180, n.

In an indictment for forgery, a count which, since 11 Geo. 4 & 1 Will. 4. c. 66, charged, that the prisoner "did falsely make, forge and counterfeit, and did cause and procure to be falsely made, forged and counterfeited, and did willingly act and assist in the false making, forging and counterfeiting" a bill of exchange, was good; as were counts charging that he did utter and publish as true, and did after dispose of and put away the bill. Rex v. Brewer, 6 C. & P. 363— Park.

An indictment for forging a bill of exchange, stating it to be signed by H. H. instead of purporting only to be so signed, the signature itself being a forgery, is bad. Rex v. Carter, 2 East, P. C. 985.

An indictment on 2 Geo. 2, c. 25, charging that the prisoner feloniously altered a bill by making, forging and adding a cipher, was good, though the words of the statute were, "if any person shall falsely make or forge, counterfeit, &c." Rex v. Elsworth, 2 East. P. C. 986.

In an indictment for forging a promissory note, the forged note might, under 2 & 3 Will. 4, c. 123, s. 3, he described as "a certain forged promissory note, for the payment of 29l.," without stating the Rex v. Burgiss, 7 C. & P. date.

490-Littledale.

On Foreign Notes or Bills. —An indictment for uttering a forged bill of exchange set out as follows: —" à 4 mois de date par cette lettre de change, à l'ordre de nousmême la somme de 500 livres sterling,"—and translated,—"at four months' date by this bill of exchange, to the order of ourselves, the sum of five hundred pounds sterling," is good. Rex v. Szudurskie, 1 M. C. C. 429.

Fish. Dig.—16.

Where a prisoner was convicted of forging an instrument (purporting to be a Prussian note) in a foreign language, but no count in the indictment contained an English translation of the note: judgment was ordered to be arrested. v. Goldstein, 7 Moore, 1; 10 Price, 88; 3 B. & B. 201; R. & R. C. C.

Sewing to the parchment which the indictment is written impressions of forged notes taken from engraved plates, is not a legal mode of setting out the notes in the indictment. Rex v. Harris, 7 C. & P. 429.

Foreign notes were set out in an indictment in the original language. but the translation omitted some words which were in the margin or a border round the body of the note, and denoted the year in which the notes were issued, and it appeared that without these words the notes would not be capable of being circulated in the country to which they belonged:—Held, that the translation was imperfect.

Describing a foreign note wholly in the English language is not sufficient in an indictment for forgery, notwithstanding the 2 & 3 Will. 4, c. 123, s. 3; but this objection, provided the description was in the words of the statute creating the offence, could only be taken advantage of by demurrer, and is cured after verdict by 7 Geo. 4, c. 64, s.

An indictment under 11 Geo. 4 & 1 Will. 4, c. 66, s. 19, for feloniously having in possession plates upon which were engraved a promissory note for payment of money of a foreign prince, inaccurately setting out the note in the foreign language and the translation, and with facsimiles of the note not engrossed in the indictment, but attached thereto on paper, was bad. Rex v. Warshaner, 1 M. C. C. 466.

Counts under 2 & 3 Will. 4, c. 123, s. 3, stating the plates to have engraved on them, in the Polish language, a promissory note for payment of money, to wit, for the payment of five florins, purporting to be a promissory note for payment of money of a certain foreign prince, without stating the value, were good after verdict. *Ib*.

An indictment under 11 Geo. 4 & 1 Will. 4, c. 66, for uttering a forged foreign promissory note, needs not allege it to be payable in England. Reg. v. Lee, 2 M. & Rob. 281—Coleridge.

Upon Bonds.]—A superfluous description of the instrument forged is not material. Therefore an indictment for forging a bond, laying it to be "a bond and writing obligatory," was good upon 2 Geo. 2, c. 25, though both terms were used in the statute; and a bond is a writing obligatory, though the converse does not hold generally. Rew v. Dunnett, 2 East, P. C. 985; 2 Leach, C. C. 581.

Since 14 & 15 Vict. c. 100, s. 8, it is sufficient, upon an indictment for forgery and utring a defrault lay the intent generally to defrault the prisoner my to defrault the prisoner my to defrault the prisoner my to defrault the had any intention attimately to defraud the party whose signature he had forged, he having defrauded the party to whom he uttered the instrument. \*Reg. v. Trenfield, 1 F. & F. 43—Channell.

Upon Deeds.]—A count for uttering a forged deed described it as "a certain deed purporting to be made on the first day of March, 1837, hetween R. W. of the one part, and D. G. of the other part, purporting to be an under lease by the said R. W. to the said D. G. of certain lands, tenements and premises therein mentioned, subject to the payment of the yearly rent of 8l., payable on the first day of March in every year, and purporting to contain a covenant by the said D. G. with the said R. W. for the pay-

ment by the said D. G. to the said R. W. of the yearly rent of 8l.," is good, under 2 & 3 Will. 4, c. 123, s. 3. Reg. v. Davies, 9 C. & P. 427; 2 M. C. C. 177.

A count for forging or uttering a deed, purporting to be a lease of certain premises, described shortly, is good, without setting it out verbatim. *Ib.* 

The instrument forged may be described as a deed, without setting it out, or averring facts to shew that it was such a deed as might be the subject of larceny. Reg. v. Collins, 2 M. & Rob. 461—Rolfe.

Upon Receipts.]—"As follows" is a sufficient averment of the tenor of a forged receipt. Rex v. Powell, 2 W. Bl. 787; 1 Leach, C. C. 77; 2 East, P. C. 976.

A receipt, signed by the captain of a detachment, on the authority of which money is received from an army agent, on account of the monthly subsistence of such detachment, might be properly described as a receipt for money, under 2 & 3 Will. 4, c. 123, s. 3, although it appeared that such instruments were frequently cashed, upon indorsement, by tradesmen in the neighbourhood of the place where the regiment was stationed, and the amount afterwards received by them of the army agent. Rex v. Rice, 6 C. & P. 634; S. P., Rex v. Hope, 1 M. C. C. 414.

An indictment for forging a receipt in the following form:—"6th January, 1830. 16l. 15s. 6d. For the high constable James Hughes," does not require explanatory averments. Reg. v. Boardman, 2 M. & Rob. 147; 2 Lewin, C. C. 181—Alderson.

A count charging the uttering a forged receipt simply is good. Rex v. Martin, 1 M. C. C. 483; 7 C. & P. 549.

payable on the first day of March in every year, and purporting to contain a covenant by the said D. G. with the said R. W. for the pay-

receipt for 21l. 11s. 4d. had been forged, by falsely cementing to the precept, at the foot, a receipt in the handwriting of Henry Hargreaves, of the tenor following:—"1825, received H. H.,"—which had before then been written by Hargreaves for other money, and that the prisoner uttered it with intent to defraud Hargreaves, is bad, because there is nothing to shew what the initials H. H. meant, and nothing to shew what connexion Hargreaves had with Hindle, or with the receipt. Rex v. Barton, 1 M. C. C. 141.

An indictment for uttering a forged receipt for money, which sets out the receipt in terms, need not set forth the bill of items to which the receipt refers, as that is matter of evidence. Rex v. Testick, 2 East, P. C. 925; S. P., Rex v. Thompson, 2 Leach, C. C. 632, n.; 1 East, 181,

An indictment on 7 Geo. 4, c. 16, s. 38, charging the prisoner with having forged and uttered "a certain receipt relating to and concerning the payment of a certain pension, to wit, 4l. 11s.  $0\frac{1}{2}d$ ., supposed to be payable to one N. M., as an outpensioner of the Royal Hospital for Soldiers at Chelsea, in the county of Middlesex:" is good. Reg. v. Pringle, 9 C. & P. 409; 2 M. C. C.

Upon Requests, Orders or Warrants for Delivery of Goods. —A count in an indictment for forging a request for the delivery of goods, which described the forged instrument as "a certain forged request for the delivery of goods to one J. R.," was good under 2 & 3 Will 4, c. 123, s. 3, and was not too general. Reg. v. Robson, 9 C. & P. 423.

A forged request, to be within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, must import on the face of it to be a request; and if the words have not necessarily that effect, but are so understood in the trade, there must be an innuendo to explain ment of the money, and an indict-

them. Rex v. Cullen, 1 M. C. C. 300; 5 C. & P. 116.

A request for the delivery of goods may be so described in an indictment for forgery, without setting it out verbatim. Reg. v. Robson, 2 M. C. C. 182.

If an indictment for forgery sets out a forged instrument in hæc verba, describing it as a warrant, order and request for the delivery of goods, it is not necessary, in order to sustain the indictment, that the instrument should answer all the terms of that description. Reg. v.Williams, 4 Cox, C. C. 356; 2 Den. C. C. 61; 14 Jur. 1052; 20 L. J., M. C. 106.

A count in an indictment for forgery alleging the forgery generally to be of a certain warrant and order for the delivery of goods without more particularity, is sufficient. Reg. v. Smith, 2 Cox, C. C. 358.

Upon Warrants or Orders for Payment of Money.]—A prisoner was indicted on 2 & 3 Will. 4, c. 123, s. 3, for forging a warrant for the payment of money. The forged paper was as follows:--" This is to satisfy that R. R. as swept the flues and cleaned the bilges, and repaired four bridges of the Princess Victoria, (signed) J. N., 4l. 10s. 0d." It was proved that, by the course of dealing between the parties, this voucher, if genuine, would have authorized L. & Co. to pay 4l. 10s. 0d.:— Held, that it is not necessary that a warrant for the payment of money should be addressed to any particular person; and that, as it appeared that this document, if genuine, would have been a voucher for the payment of the money mentioned in it, that was a sufficient proof of the allegation that it was a warrant for the payment of money. Reg. v.Rogers, 9 C. & P. 41.

A forged authority to draw money, which is well described as a warrant, is not an order for the pay-

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ment describing such a forged authority for the payment of money as a warrant and order, is bad. Reg. v. Dixon, 3 Cox, C. C. 289—Alderson.

An indictment which charges a forged cheque to be "a warrant and order for the payment of money, which warrant and order are in the words and figures following," is good. Rex v. Crowther, 5 C. & P. 316—Bosanquet.

Indictment for forging an order for relief to a discharged prisoner, under 3 Geo. 4, c. 85, being in many instances ungrammatical and at variance from the act:—Held, bad. Rew v. Donnelly, 1 M. C. C.

438.

An indictment for presenting a forged order to W. L., treasurer, &c., pretending it was genuine, and obtaining from him under it 4l. 10s. 6d., after charging that the prisoner, with intent to cheat the treasurer, presented the order, and that he knowingly, &c., pretended it was a genuine order, proceeded—" and so the jurors, &c., say that the prisoner, on the day and year, &c., did obtain the said sum of 4l. 10s. 6d."; but the intent to cheat and defraud W. L. was not stated in that part of the indictment, nor was the obtaining charged to have been effected knowingly and designedly:-Held, bad. Rex v. Rushworth, R. & R. C. C. 317; 1 Stark, 396.

Upon Wills.]—An indictment for forging a paper writing purporting to be the will of A. is good. Rex v. Birch, 2 W. Bl. 790; 1 Leach, C. C. 79; 2 East, P. C. 980.

Other Instruments.] — A count which, without an inducement, charging that the prisoner "did forge a writing, as a certificate of W. N., with intent to deceive and defraud W. P. and others," is good. Reg. v. Toshack, 13 Jur. 1011; 1 Den. C. C. 492.

7. Allegation and Proof of Intent to defraud.

By 24 & 25 Vict. c. 98, s. 44, "it shall be sufficient in any indict-"ment for forging, altering, utter-"ing, offering, disposing of, or put-"ting off any instrument whatso-"ever, where it shall be necessary "to allege an intent to defraud, to "allege that the party accused did "the act with intent to defraud, "without alleging an intent to de-"fraud any particular person; and " on the trial of any such offence it "shall not be necessary to prove an "intent to defraud any particular "person, but it shall be sufficient to "prove that the party accused did "the act charged with an intent to "defraud." (Similar former enactment, 14 & 15 Vict. c. 100, s. 8.)

Since 14 & 15 Vict. c. 100, s. 8, there must be proof of an intent to defraud some person, in order to support the indictment for forgery, though it need not be alleged that it was done with intent to defraud a particular person. Reg. v. Hodgson, Dears. & B. C. C. 3; 2 Jur., N. S. 453; 25 L. J., M. C. 78.

It is only necessary to aver a general intent to defraud A. B., without setting out the manner in which that fraud was to be effected. *Rex* v. *Powell*, 2 W. Bl. 787; 1 Leach,

C. C. 77; 2 East, P. C. 976.

It is sufficient, upon an indictment for forgery and uttering a bond, to lay the intent generally to defraud; and the prisoner may be convicted, although it does not appear that he had any intention ultimately to defraud the party whose signature he had forged, he having defrauded the party to whom he uttered the instrument. Reg. v. Trenfield, 1 F. & F. 43—Channell.

The words "with intent," in an indictment for forgery, apply to the verb to which the prisoner's name is the nominative; therefore, a count which states that the prisoner did forge a promissory note for 50l. "on

which note is an indorsement as follows:—C. J., with intent to defraud W. R. S.," sufficiently charges that the forged note, and not the indorsement, was the thing by which the prisoner intended to defraud W. R. S. Rev v. James, 7 C. & P. 553. Rex v. James, 7 C. & P. 553— Patteson.

The fact that the prisoner has given guaranties to his bankers, to whom he paid a forged note to a larger amount than the note, does not so completely negative an attempt to defraud them as to withdraw the case from the considera-

tion of the jury. Ib.

On the trial of an indictment for uttering a forged bill of exchange, if the jury is satisfied that the prisoner uttered the bill as a true bill, meaning it to be taken as such, and at that time knew it to be forged, they ought to find, as a necessary consequence of law, that the prisoner intended to defraud, and the jury ought to infer the intent to defraud, if they are satisfied on the two other Reg. v. Hill, 8 C. & P. points. 274.

If a person, at the time he uttered a bill of exchange with a forged acceptance on it, knew that acceptance to be forged, and meant the bill to be taken as a bill with a genuine acceptance upon it, the inevitable conclusion is, that he intended to defraud. Reg. v. Cooke, 8 C. & P. 582—Patteson.

So, it is a consequence, and almost a consequence of law, that he must intend to defraud the person to whom he pays the bill, and also the person whose name is used; as everything which is the natural consequence of the act must be taken to be the intention of the Ib.prisoner.

A jury ought to infer an intent to defraud the person who would have to pay a forged instrument if it was genuine, although from the manner of executing a forgery, or from that person's ordinary caution,

him, and although the object was generally to defraud whoever might take the instrument, and the intention of defrauding in particular the person who would have to pay the instrument if genuine did not enter into the prisoner's contemplation. Rex v. Mazagora, R. & R. C. C. R.

In forgery it is not required, in order to constitute in point of law an intent to defraud, that the party committing the offense should have had present in his mind an intention to defraud a particular person, if the consequences of his act would necessarily or possibly be to defraud any person; but there must at all events be a possibility of some person being defrauded by the forgery. Reg. v. Marcus, 2 C. & K. 356— Cresswell.

A prisoner asked his employer to give him 41. to buy "settledated striking acid," to be used in the employer's tanning business, which the prisoner superintended; the employer gave him the money, and about four days after the prisoner delivered to his employer a forged receipt for the 4l., which purported to come from a firm of whom the acid had been bought:—Held, that proof of these facts was sufficient evidence of uttering the forged receipt with intent to defraud the employer. Rex v. Martin, 7 C. & P. 549; 1 M. C. C. 483.

On a charge of uttering a receipt with intent to defraud, the uttering being to the employer, and he appearing to have been indebted to the prisoner at the time, negatives the intent to defraud. Reg. v. Bradford, 2 F. & F. 859—Erle.

Where, on the trial of a prisoner for forging a note, it appeared that he had kept the note in his possession, and never uttered or attempted to make any use of it:-Held, whether the note was made innocently, or with intent to defraud. was for the consideration of the it would not be likely to impose on | jury, and to be collected from the

facts proved. Rex v. Crocker, R. & R. C. C. 97; 2 N. R. 87; 2 Leach, C. C. 987.

Uttering a forged stock receipt to a person who employed the prisoner to buy stock to that amount, and advanced the money, is sufficient evidence of an intent to defraud that person; and the oath of the person to whom the receipt was uttered, that he believed the prisoner had no such intent, will not repel the presumption of an intention to defraud. Rex v. Sheppard, 1 Leach, C. C. 226; 2 East, P. C. 967; R. & R. C. C. 169.

The intent to defraud the bank constitutes the offence of feloniously disposing of and putting away counterfeit bank-notes, and it is not done away by the circumstance that the notes were furnished by the prisoner in consequence of an application made by an agent employed thereto by the bank, and that they were delivered to him as forged notes, for the purpose of being disposed of by that agent. Rew v. Holden, 2 Taunt. 334.

Where a forged request for the delivery of goods was addressed in her maiden name to a female, who prior to the date of it had married:
—Held, that the party uttering it might properly be convicted, on an indictment charging the intent to be to defraud the husband. Rex v. Carter, 7 C. & P. 134.

If a banker authorized to pay a sum of money to three persons in particular, and to them only, pays it to one of them and two strangers, who personate the other two, his liability continues, and the false instrument upon which the money was obtained may be charged to have been made with intent to defraud them. Dixon's case, 2 Lewin, C. C. 178—Patteson.

# 8. Jurisdiction to try.

By 24 & 25 Vict. c. 98, s. 41, iif any person shall commit any offence against this act, or shall

"commit any offence of forging or "altering any matter whatsoever, or " of offering, uttering, disposing of, " or putting off any matter whatso-"ever, knowing the same to be "forged or altered, whether the "offence in any such case shall be "indictable at common law, or by "virtue of any act, passed or to be "passed, every such offender may "be dealt with, indicted, tried, and "punished, in any county or place "in which he shall be apprehended "or be in custody, in the same "manner in all respects as if his "offence had been actually com-"mitted in that county or place; "and every accessory before or "after the fact to any such offence, "if the same be a felony, and every "person aiding, abetting, or counselling the commission of any "such offence, if the same be a mis-"demeanor, may be dealt with, "indicted, tried, and punished, in "any county or place in which he "shall be apprehended or be in "custody, in the same manner in "all respects as if his offence, and "the offence of his principal, had "been actually committed in such "county or place."  $(Similar\ to\ 11$ Geo. 4 & 1 Will. 4, c. 66, s. 24, repealed.)

By s. 50, "all indictable offences "mentioned in this act which shall "be committed within the jurisdic-"tion of the Admiralty of England "or Ireland shall be deemed to be "offences of the same nature and "liable to the same punishments as "if they had been committed upon "the land in England or Ireland, "and may be dealt with, inquired "of, tried, and determined in any "county or place in England or "Ireland in which the offender "shall be apprehended or be in "custody, in the same manner in all "respects as if they had been actually " committed in that county or place; "and in any indictment for any "such offence, or for being an ac-"cessory to such an offence, the "venue in the margin shall be the "same as if the offence had been "committed in such county or "place, and the offence shall be "averred to have been committed "on 'the high seas': provided that "nothing herein contained shall " alter or affect any of the laws re-"lating to the government of her "Majesty's land or naval forces."

By 5 & 6 Vict. c. 38, "the offence " of forgery cannot be tried at quar-

"ter sessions."

On an indictment for forgery at common law, it is not necessary to prove that the party charged was in custody before the time of the trial, in order to give jurisdiction under 11 Geo. 4 & 1 Will. 4, c. 66, s. 24. Reg. v. Smythies, T. & M. 190; 1 Den. C. C. 498; 19 L. J., M. C. 31; 4 Cox, C. C. 94; 13 Jur. 1034.

A verdict, in such case, of guilty of forging, but there is no evidence of its having been done within the jurisdiction of the court, amounts

to a conviction. Ib.

Where a prisoner was tried for forgery in the county where he was in custody, under 11 Geo. 4 & 1 Will. 4, c. 66, s. 24, the forgery might be alleged to have been committed in that county, and there need not be any averment that the prisoner was in custody there. Rex v. James, 7 C. & P. 553—Patteson.

# 9. Election of Forgeries.

The bank of England having preferred several indictments for uttering and having in possession, in respect of the same note, and having elected to proceed on the indictment for having in possession:—Held, that although facts sufficient to support the capital charge were made out in proof, an acquittal for the minor offence ought not to be directed, because the whole of the minor offence was proved, and it did not merge in the larger. Anon., R. & R. C. C. 378.

The bank might elect to proceed 2 Leach, C. C. 808, 814.

on an indictment for a lesser offence, although an indictment had been found for a capital charge in respect of forging the same note.

On a count for uttering several forged receipts, the court will not put the prosecutor to his election on which receipt to proceed, if they be all uttered at the same time. v. Thomas, 2 East, P. C. 934,

### 10. Uttering.

What is.]—Putting a letter into the Manchester post-office, containing a forged instrument, is an uttering in the county of Lancaster, and the post-mark is evidence of such an uttering. Perkin's case, 2 Lewin, C. C. 150—Park.

Uttering in England a forged note, payable in Ireland only, was within the forgery acts prior to 11 Geo. 4 & 1 Will. 4, c. 66. Rex v.

Kirkwood, 1 M. C. C. 311.

The uttering a bill with a genuine indorsement, under pretence of being the indorser, will not subject the party to an indictment as for uttering a forged instrument, as it is only a misdemeanor. Hevey, R. & R. C. C. 407, n.; 2 East, P. C. 556, 856; 1 Leach, C. C. 229.

Forging a bill payable to the prisoner's own order, and uttering. it without an indorsement as a security for a debt, is a complete offence, if done with a fraudulent intent, the bill having been issued to obtain credit, though as a pledge only. Rex v. Birkett, R. & R. C. C. 86.

On an indictment for forging a scrip receipt, it must appear that the receipt was signed subsequently to the passing of the statute on which the indictment is founded; but though signed before, yet, if it was uttered after the passing of the act, the prisoner may be convicted on the count for uttering it, knowing it to be forged. Rex v. Reeves.

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Shewing a man an instrument, the uttering of which would be criminal, though with an intent of raising a false idea in him of the party's substance, is not an uttering. Rev v. Shukard, R. & R. C. C. 200.

Nor will the leaving it afterwards, sealed up, with the person to whom it was shewn under cover, that he may take charge of it, as being too valuable to be carried

about, be an uttering. Ib.

The offence of disposing and putting away forged bank-notes is complete, although the person to whom they are disposed was an agent for the bank to detect utterers, and applied to the prisoner to purchase forged notes, and had them delivered to him as forged notes, for the purpose of disposing of them. Rew v. Holden, R. & R. C. C. 154; 2 Leach, C. C. 1019; 2 Taunt. 334.

A bill was addressed to Messrs. Williams & Co., bankers, Birchin Lane, London, and there might, at that time, have been a 3 on the lower left-hand corner of the bill; the prisoner was asked at the time whether the acceptors were Williams, Birch & Co., and his answer imported that they were. Wiliams, Birch & Co. lived at No. 20, Birchin Lane, and it was not their acceptance. There were no other known bankers in London using the style of Williams & Co.: but at No. 3, Birchin Lane, the name of "Williams & Co." was on the door; and some bills addressed to Messrs. Williams & Co., bankers, Swansea, had been accepted, payable at No. 3, and had been paid there. was no evidence who lived at No. 3, but another bill of the same tenor as that in question, drawn by the prisoner, had been accepted there: -Held, that on these facts he was improperly convicted of uttering a forged acceptance, knowing it to be forged. Rex v. Watts, R. & R. C. C. 436; 3 B. & B. 197; 6 Moore, 442.

If a person knowingly delivers a

forged bank-note to another, who knowingly utters it accordingly, the prisoner, who delivered such note to be put off, might have been convicted of having disposed and put away the same, on 15 Geo. 2, c. 13, s. 11. Rex v. Palmer, R. & R. C. C. 72; 1 N. R. 96; 2 Leach, C. C. 978.

Uttering a forged bill of exchange, purporting to be payable to the drawer's order, with intent to defraud, is a complete offence, although there is no indorsement upon it importing to be the drawer's, Rex v. Wicks, R. & R. C.

C. 149.

If a person presents a bill of exchange for payment, with a forged indorsement upon it of a receipt by the payee, and the clerk to whom he presents it objects to a variance between the spelling of the payee's name in the bill and the indorsement, upon which the person alters the indorsement into a receipt by himself for the payee: semble, that the act of presenting the bill to the clerk previously to his objection is sufficient to constitute the offence of uttering the forged indorsement. Rex v. Arscott, 6 C. & P. 408.

If an engraving of a forged note is given to a party as a pattern or as a specimen of skill, the party giving it not intending that the particular note should be put in circulation, it is not an uttering. Rev v. Harris, 7 C. & P. 428—

Littledale.

Where a prisoner, charged with uttering a forged note to A., knowing it to be forged, gave forged notes to a boy who was ignorant of that fact, and directed him to pay away the note mentioned in the indictment at A.'s for the purchase of goods, and the boy did so, and brought back the goods and the change to the prisoner:—Held, that it was an uttering by the prisoner to A. Rex v. Giles, Car. C. L. 191; 1 M. C. C. 166.

If A. exhibits a forged receipt to

B., a person with whom he is claiming credit for it, this is an uttering, although A. refuses to part with the possession of the paper out of his hand. Reg. v. Radford, 1 C. & K. 707; 1 Den. C. C. 59.

On a trial for uttering a forged note scienter, the admissibility of evidence of other utterings is not affected by Reg. v. Oddy, 2 Den. Reg. v. Green, 3 C. & C. C. 264.

K. 209—Cresswell.

The prisoner placed a forged receipt for poor-rates in the hands of the prosecutor for inspection only, in order, by representing himself as a person who had paid his rates, fraudulently to induce the prosecutor to advance money to a third person:-Held, that this was an uttering. Reg. v. Ion, 2 Den. C. C. 475; 16 Jur., 746; 6 Cox, C. C.

Upon proceedings before justices against a pawnbroker, under 39 & 40 Geo. 3, c. 99, s. 14, he delivering to them, through the hands of his attorney, a false and fabricated duplicate of goods that had been pledged with him, is an uttering by the pawnbroker. Reg. v. Fitchie, Dears. & B. C. C. 175; 3 Jur., N. S. 419; 26 L. J., M. C. 90; 7 Cox, C. C. 257.

Conditional.]—A conditional uttering of a forged instrument is as much a crime as any other uttering. Where a person gave a forged acceptance, knowing it to be so, to the manager of a banking company where he kept an account, saying, that he hoped this bill would satisfy the bank as a security for the debt he owed, and the manager replied that that would depend on the result of inquiries respecting the acceptance: —Held, a sufficient uttering. v. Cooke, 8 C. & P. 582—Patteson.

Joint Uttering. —Where three were jointly indicted for feloniously using plates, containing impressions of forged notes:—Held, that the the deeds formed a part of the evi-Fish. Dig.—17. Digitized by Microsoft®

jury must select some one particular time after all three had become connected, and must be satisfied, in order to convict them, that at such time they were all either present together at one act of using, or assisted in such one act, as by two using, and one watching at the door to prevent the others being disturbed, or the like; and that it was not sufficient to shew that the parties were general dealers in forg- • ed notes, and that at different times they had singly used the plates, and were individually in possession of forged notes taken from them. Rex v. Harris, 7 C. & P. 416.

V. was indicted for uttering forged post-office money orders. and S. were joined in the indictment, and convicted. They had gone to the shop where V. uttered the orders, remaining outside in a cab so situated that they could not see or be seen by the people in the shop. They had previously accompanied  $\nabla$  to another shop, where he failed to get change for the orders, and they assisted him in taking away the goods obtained at the second shop: -Held, that though they were not in the cab for the purpose of taking part in aiding or assisting in the actual act of uttering, they were rightly convicted. Reg. v. Vanderstein, 16 Ir. C. L. R. 574; 10 Cox, C. C. 177 (Ir. C. C. R.).

#### 11. Evidence.

Production of Instrument. -If, on an indictment for forgery being presented to the grand jury, it appears that the forged instrument cannot be produced, either from its being in the hands of the prisoner, or from any other sufficient cause, the grand jury may receive secondary evidence of its contents. Rex v. Hunter, 3 C. & P. 591—Park.

On an indictment for forgery being presented to the grand jury, a witness declined to produce certain deeds before them :-Held, that, if

dence of the witness's title to his own estate, he was not compellable to produce them, but that, if they did not, the grand jury might com-

pel their production.

On an indictment for uttering a forged deed, it appeared that the deed alleged to have been forged was produced in evidence by the prisoner's attorney on the trial of an ejectment, in which the prisoner · was lessor of the plaintiff; and that, after the trial, it was returned to the prisoner's attorney:—Held, that, if the prisoner did not produce the deed, he having had notice to produce it, secondary evidence might be given of its contents, without calling his attorney to prove what he had done with the deed. If, as secondary evidence of the contents of the deed, the draft is given in evidence, and in the draft words are abbreviated, which, in the setting out of the deed in the indictment, are put in words at length, it will be for the jury to say whether they think that the words abbreviated in the draft were inserted at length in the deed itself. Rex v. Hunter, 4 C. & P. 128-Vaughan.

If a forged deed is in the possession of a prisoner, who is indicted for forging it, the prosecutor is not entitled to give secondary evidence of its contents, unless he has, a reasonable time before the commencement of the assizes, given the prisoner notice to produce it; and a notice given to the prisoner during the assizes is too late; but if the prisoner has said that he has destroyed the deed, no notice to produce it will be necessary. Rex v. Haworth, 4 C. &. P. 254—Parke.

Quære, whether a forged document intrusted by the prisoner to an attorney, as an attorney, can be produced on the trial for the forgery? Reg. v. Tylney, 1 Den. C. C. 319; 18 L. J., M. C. 36.

Stamping. —On an indictment

bill may be given in evidence, although it is not stamped. Hawkeswood, 1 Leach, C. C. 257; 2 East, P. C. 955; 2 T. R. 606, n.; S. P., Rex v. Morton, 2 East, P. C. 955; 1 Leach, C. C. 259, n.; S. P., 17 & 18 Vict. c. 83, s. 27.

To implicate or connect. —In case of forging and uttering a forged bill, a letter written by the prisoner to a third person, saying that such person's name is on another bill, and desiring him not to say that that bill is a forgery, is receivable in evidence to shew guilty knowledge; but the jury oughtnot to consider it as evidence that the other bill is forged, unless such bill is produced, and the forgery of it proved in the usual way. Rex v. Forbes, 7 C. & P. 224.

A. was charged with a forgery, and B. was examined on oath before the magistrate as a witness against A; after this B. was himself charged with a different forgery: —Held, that the deposition of B. was evidence against him on his trial for the forgery, notwithstanding it was taken on oath. Rex v. Haworth, 4 C. & P. 254—Parke.

On an indictment for uttering a forged bill of exchange, the judge will hear evidence of all the facts which form parts of one continued transaction relating to the uttering of the bill, and will not press the prosecutor to elect what particular fact he means to rely upon as the uttering, till the case for the prosecution is closed. Rex v. Hart. 7 C. & P. 652—Littledale.

On the trial of a indictment for forgery of the acceptance of a bill of exchange, evidence of what the prisoner said respecting other bills of exchange which are not in evidence, is not admissible. Req. v. Cooke, 8 C. & P. 586—Patteson. But see Reg. v. Brown, 2 F. & F.559—Crompton.

The examination of a person takfor forging a bill of exchange the en on oath as a witness before Commissioners of Bankruptcy, is admis- Wylie, 1 N. R. 92; S. C. nom. sible against him on a charge of forgery, he having been cautioned and allowed to elect what questions he would answer. Reg. v. Wheater, 2 Lewin, C. C. 157; 2 M. C. C. 45.

On an indictment for forging a bank-note, a letter purporting to come from the prisoner's brother, and left by the postman pursuant to its direction, at the prisoner's lodgings, after he was apprehended and during his confinement, but never actually in his custody, cannot be read in evidence against him on his trial. Rex v. Huet, 2 Leach, C. C. 820.

Where a prisoner utters an instrument with a forged indorsement or other writing, and a short time previously the instrument is shewn to have been in his possession without such indorsement, there is some evidence of forgery, although there is no proof of the indorsement being in the prisoner's handwriting, or if it is even shewn that he is unable to write. Reg. v. James, 4 Cox, C. C. 90—Erle.

On an indictment for forgery, it appeared that the prisoner, on the discovery of the forgery, being susto write his pected, was asked name, for the purpose of comparison, and did so:-Held, that this signature was not admissible on the part of the prosecution for that purpose. Reg. v. At F. 781—Wightman. Reg. v. Aldridge, 3 F. &

Uttering a forged order for the payment of money under a false representation is evidence of knowing it to be forged. Rex v. Sheppard, 1 Leach, C. C. 226; 2 East, P. C. 967; R. & R. C. C. 169.

Of Guilty Knowledge. —Upon an indictment for disposing of and putting away a forged bank-note knowing it to be forged, the prosecutor may give evidence of other forged notes having been uttered by the prisoner, in order to prove his knowledge of the forgery. Rex v.

Rex v. Whiley, 2 Leach, C. C. 983; S. P., Rex v. Tattersall, 1 N. R. 93,

So proof that the prisoner had in his possession other bills or notes of the same kind is admissible. Rex v. Hough, R. & R. C. C. 120.

So proof that he pointed out where such others were hidden. Rex v. Rowley, Bayl. Bills, 448.

If the possession of other forged instruments is offered in evidence to prove a guilty knowledge, there must be regular evidence that such instruments were forged; proof that the prisoner returned the money on such an instrument, and received the instrument back, is not sufficient without producing the instrument or duly accounting for its non-production. Rex v. Millard, R. & R. C. C. 245.

Upon an indictment for uttering a forged note, evidence is admissible of the prisoner's having, at a prior time, uttered another forged note of the same manufacture; and also that other notes of the same fabrication had been found on the files of the bank, with his handwriting on the back of them, in order to shew his knowledge of the note mentioned in the indictment being a forgery. Rex v. Ball, R. & R. C. C. 132; 1 Camp. 324; 2 Leach, C. C. 987, n.

In order to shew a guilty knowledge, on an indictment for uttering forged bank-notes, evidence of another uttering, subsequently to the one charged, is not admissible, unless the latter uttering was in some way connected with the principal case, or it can be shewn that the notes were of the same manufacture; for only previous or contemporaneous acts can shew quo animo a thing is done. Rex v. Taverner, Car. L. 195.

If a second uttering is made the subject of a distinct indictment, it cannot be given in evidence to shew a guilty knowledge in a former ut-

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633—Vaughan.

On an indictment for uttering forged Polish notes, conversations with the prisoners respecting the forgery and circulation of forged Austrian notes are admissible to prove the scienter. Rex v. Harris, 7 C. & P. 429—Williams.

On an indictment for engraving or uttering notes of a foreign prince, evidence of a recent engraving or uttering notes of another foreign prince is admissible, in proof of a guilty knowledge. Rex v. Balls, 1

M. C. C. 470.

In a prosecution for forging and uttering a receipt, knowing it to be forged, it was proposed to give in evidence other acts of forgery by the prisoner, against the same prosecutor, as evidence of guilty knowledge, on the count for uttering. It was objected that they could only be given in evidence if they were forgeries, and there was no evidence of that without first asking the jury to find them so, which was not the issue they had to try: -Held, that the whole evidence must be confined to the document they were proceeding upon, without at all trenching upon the rules as to uttering in other cases. Reg.v. *Moore*, 1 F. & F. 73—Byles and Martin.

Upon an indictment for uttering a forged bill, the previous uttering of other bills forged in other names may be given in evidence in proof  ${
m guilty\ knowledge.}\quad {
m \it Reg.\ v.\ \it Salt},$ 

3 F. & F. 834—Williams.

It is impracticable to lay down any general rule as to the time within which such previous uttering must have taken place, in order

to be admissible. Ib.

What is Possession.]—By 24 & 25 Vict. c. 98, s. 45, "where the " having any matter in the eustody " or possession of any person is in "this act expressed to be an offence, "if any person shall have any "such matter in his personal cus- The inspector, in the absence of

tering. Rex v. Smith, 2 C. & P. "tody or possession, or shall know-"ingly and wilfully have any such "matter in the actual custody or " possession of any other person, or "shall knowingly and wilfully "have any such matter in any "dwelling-house or other building, " lodging, apartment, field or other "place, open or inclosed, whether " belonging to or occupied by him-"self or not, and whether such "matter shall be so had for his "own use or for the use or benefit "of another, every such person "shall be deemed and taken to "have such matter in his custody " or possession within the meaning " of this act."

> Where, on an indictment on 45 Geo. 3, c. 89, s. 6, for knowingly and wittingly having in his possession forged Bank of England notes, it appeared that the prisoner, being suspected of having such in his possession, was requested by A. to sell him some, which he said he would do, and A. accordingly paid him for them; the prisoner then went ont as he said to fetch the notes, but on his return said, "he had put them in an old shoe in a particular place," which he described; A. then went to look for the notes, and the prisoner followed him, whilst A. was looking for them, the prisoner threw a stone into the place, and said there they are; A., on looking there, found the notes in an old shoe:—Held, that the prisoner had a sufficient possession within the meaning of the statute. Rex v. Rowley, R. & R. C. C. 110.

A. took a bank-note in the course of his business, which he paid to B.; the note was afterwards stopped at the bank as a forged note, and was brought by an inspector to A., who immediately paid to B. the amount of the note, and refused to give it up to the inspector, insisting on his right to retain it, in order to recover the amount from the person from whom he had received it. all circumstances of suspicion, is not justified in charging A. before a magistrate with feloniously having the note in his possession, knowing it to be forged, for the purpose of compelling him to give up the note. By possession under the 45 Geo. 3, c. 89, was meant the original possession of a note acquired in an illegal mode, and not a subsequent possession, like the above, where the original possession was legal. Brooks v. Warwick, 2 Stark. 389— Ellenborough.

#### 12. Witnesses.

By 9 Geo. 4, c. 32, s. 11, "on "any prosecution by indictment or "information, either at common "law or by virtue of any statute, "against any person for forging "any deed, writing, instrument or "other matter whatsoever, or for "uttering or disposing of any deed, "writing, instrument, or other mat-"ter whatsoever, knowing the same "to be forged, or for being ac-"cessory before or after the fact "to any such offence, if the same "be a felony, or for aiding, abet-"ting or counselling the commis-"sion of any such offence, if the " same be a misdemeanor, no person "shall be deemed to be an incompe-"tent witness in support of any such " prosecution, by reason of any inter-"est which such person may have or "be supposed to have in respect of "any such deed, writing, instru-"ment or other matter."

To prove the forging of a banknote, it is not necessary that the signing clerk at the bank should be produced, if witnesses acquainted with his handwriting state that the signature to the note is not in his handwriting. Anon., R. & R. C. C. 378.

On an indictment for uttering a forged will, which, together with writings in support of it, was suggested to have been written over pencil marks which had been rub-

er, who has examined the paper with a mirror, and traced the pencil marks, is admissible on the part of the prosecution. Reg. v. Williams, 8 C. & P. 434—Parke.

On an indictment for uttering a forged cheque in the name of J. W., on Messrs. C. G. & Co., who were army agents and bankers, evidence by a clerk in the former department that he did not know any customer named J. W., and that he had been told by the other clerks that there was not any such customer in the banking department, is sufficient on the part of the prosecution to call upon the prisoner to shew that there was in fact such a person as J. W. having an account with Messrs. C. G. & Co., and in the absence of such proof, is sufficient by itself for the jury. Rex v. Brannan, 6 C. & P. 326—Park, Patteson and Gurney.

13. Power to seize Forged Instruments and Implements.

(24 & 25 Vict, c. 98, s. 46.)

14. Punishment. (24 & 25 Vict. c. 98, ss. 47, 48.)

## 15. Costs of Prosecution.

By 24 & 25 Vict. c. 98, s. 54, "the court before which any indict-"able misdemeanor against this act "shall be prosecuted or tried may "allow the cost of the prosecution "in the same manner as in cases of "felony; and every order for the "payment of such costs shall be "made out, and the sum of money "mentioned therein paid and repaid, "upon the same terms and in the "same manner in all respects as in "cases of felony."

XVIII. GOVERNMENT STORES.

gas 27/.

See the Naval and Victualling Stores Act, 1862, 25 & 26 Vict. c. bed out, the evidence of an engrav- | 64, which repeals sections 1, 2, 4, &

5 of 9 & 10 Will. 3, c. 41; 9 Geo. er. 1, c. 8, ss. 3, 4 & 5; 17 Geo. 2, c. Will 40, s. 10; 39 & 40 Geo. 3, c. 89; store 54 Geo. 3, c. 60; and 55 Geo. 3, c. keep the decided.

One became possessed, on the death of her husband, of canvass stores, which had been purchased by him in his lifetime, at a public sale, and had been many years made up into household furniture, but no evidence was given of any certificate of such sale being lawful, as required by 9 & 10 Will. 3, c. 41, or of any excuse allowed by the act; yet the possession being, by act of law, without fraud:—Held, not within the penalty of the statute. Anon., 2 East, P. C. 765.

An indictment under 39 & 40 Geo. 3, c. 89, alleged that A., on the 19th day of May, 1842, not being a contractor, had in his possession naval stores:—Held, that the date given applied to the allegation that A. was not a contractor, as well as to the allegation that he had possession of the stores, and therefore that it was sufficiently averred that he was not a contractor at the time of such possession. Silversides v. Reg. (in error), 2 G. & D. 617; 3 Q. B. 406; 6 Jur. 805.

Bags marked M. were forwarded from Portsmouth to London by railway, and were deposited in the goods department of the railway company in London. The prisoner, a marine store dealer in Portsmouth, wrote and telegraphed to G., an officer of the company, to deliver the bags to The bags, on being opened, were found to contain naval stores marked with the broad arrow. The bags had been delivered at the Portsmouth station by two women, but there was no evidence to connect them with the prisoner. marked E. had previously been forwarded by the company to their goods department in London, and delivered to E. in accordance with directions received from the prison-

er. He was indicted under 9 & 10 Will. 3, c. 41, s. 2, for having naval stores in his custody, possession and keeping, and convicted:—Held, that the evidence was sufficient to support the conviction. Reg. v. Sunley, Bell, C. C. 145; 5 Jur., N. S. 551; 7 W. R. 418; 33 L. T. 154; 8 Cox, C. C. 179.

A. was indicted, under 9 & 10 Will. 3, c. 41, s. 2, for having been found in possession of naval stores marked with the broad arrow. was proved that he delivered to the captain of a coasting vessel a cask containing copper bolts, a portion of which was marked with the broad arrow. The cask was seized by the police before the vessel sailed. In answer to questions put to the jury, they found that A. was in the possession of the copper bolts; that they had not sufficient evidence before them to shew that he knew. that the copper, or any part of it, was marked with the broad arrow; and that he had reasonable means of knowing that it was so marked: —Held, that upon this finding of the jury he was entitled to an acquittal, as it must be taken that he did not know that the copper was marked. Reg. v. Sleep, L. & C. 44; 8 Cox, C. C. 472; 7 Jur., N. S. 979; 30 L. J., M. C. 170; 9 W. R. 709; 4 L. T., N. S. 525.

Held, that the conviction was also wrong, upon the ground that the copper was not found in his possession. *Ib*.

An indictment framed under 9 & 10 Will. 3, c. 41, and 55 Geo. 3, c. 127, and charging that the prisoners received, and had in their possession, certain government stores, will not be supported by evidence which merely shews that they were dealing with the cases in which the stores were placed—in the absence of evidence to shew that they knew the government mark was on the stores. Reg. v. O'Brien, 15 L. T., N. S. 419—Smith.

The bare possession of marked

naval stores does not render a per- 1. Illegal making, use and employson liable to be convicted under 9 & 10 Will. 3, c. 41, if he was ignorant that the stores are so marked. Reg. v. Willmett, 3 Cox, C. C. 281 --Coltman.

A defendant charged with the possession of two lots of marked naval stores produced at his trial two certificates in respect of the different lots, signed respectively by the commodore superintendent of the Woolwich Dockyard, and the secretary of the board of ordnance, the former having been granted to the person of whom the defendant purchased, the latter to the defendant himself:—Held, that these certificates, though not strictly in accordance with 9 & 10 Will. 3, c. 41, ss. 2, 4, were nevertheless an answer to the charge. Ib.

On an indictment charging the defendant with being in possession of naval stores marked with the broad arrow, it is necessary to shew not only that he was possessed of the articles, but also that he knew they were marked with the broad arrow. Reg. v. Cohen, 8 Cox, C. C. 41-

Watson and Hill.

The fraudulently charging, by a purser, of stores which were never issued, and the making of false entries in the ship's books to cover such charges, is an offence punishable "according to the laws and customs in such cases used at sea," as amounting under 22 Geo. 2, c. 33, s. 36, to "a crime not capital, committed by a person in the fleet not before mentioned in this act, and for which no punishment is thereby directed to be inflicted." Mann v. Owen, 4 M. & R. 449; 9 B. & C. 595.

#### XIX. GUNPOWDER.

1. Illegal Making, Use and Employment, 231.

2. Intent to murder by-See Mur-DER, AND OFFENSES AGAINST THE PERSON.

3. Inflicting Injuries by-See Mur-

By 24 & 25 Vict. c. 97, s. 54, "whosoever shall make or manu-"facture, or knowingly have in his "possession, any gunpowder, or "other explosive substance, or any "dangerous or noxious thing, or any "machine, engine, instrument or "thing, with intent thereby or by "means thereof to commit, or for "the purpose of enabling any other "person to commit, any of the fel-"onies in this act mentioned, shall " be guilty of a misdemeanor, and, "being convicted thereof, shall be "liable, at the discretion of the "court, to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment, and, if a male under the age "of sixteen years, with or without "whipping." (Former provision, 9 & 10 Vict. c. 25, s. 8.)

By s. 55, "any justice of the "peace of any county or place in "which any machine, engine, im-" plement or thing, or any gunpow-" der or other explosive, dangerous " or noxious substance, is suspected "to be made, kept or carried for "the purpose of being used in com-" mitting any of the felonies in this "act mentioned, upon reasonable "cause assigned upon oath by any " person, may issue a warrant under "his hand and seal for searching in "the daytime any house, mill, mag-" azine, storehouse, warehouse, shop, " cellar, yard, wharf, or other place, " or any carriage, waggon, cart, ship, "boat or vessel, in which the same "is suspected to be made, kept or " carried for such purpose as herein-" before mentioned; and every per-"son acting in the execution of any "such warrant shall have, for seiz-"ing, removing to proper places, " and detaining every such machine, "engine, implement and thing, and "all such gunpowder, explosive, "dangerous or noxious substances bigitized by Microsoft® "found upon such search, which "he shall have good cause to sus-"pect to be intended to be used in "committing any such offence, and "the barrels, packages, cases and "other receptacles in which the "same shall be, the same powers "and protections which are given "to persons searching for unlawful "quantities of gunpowder under the warrant of a justice by 23 & "24 Vict. c. 139."

"As to keeping combustible "matters on board vessels in the "Thames, see 2 & 3 Vict. c. 47, s. " 37."

It would seem that if persons put on board a ship an unknown article of a combustible and a dangerous nature, without giving due notice of its contents, so as to enable the master to use proper precautions in the stowing of it, they are guilty of Williams v. East a misdemeanor. India Company, 3 East, 192, 201.

#### XX. LARCENY AND RECEIVERS.

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(e) By Hirers of Property, 244. From Bailees at Common

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5. From the Person, 266.

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8. From Mines, 268.

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# 1. What amounts to a Taking.

(a) General Principles.

Statute.]—By 24 & 25 Vict. c. 69, s. 2, "every larceny, whatever " be the value of the property stol-"en, shall be deemed to be of the same nature, and shall be subject "to the same incidents in all respects "as grand larceny was before the "21st of June, 1827; and every "court whose power as to the trial " of larceny was before that time "limited to petty larceny, shall "have power to try every case of " larceny, the punishment of which " cannot exceed the punishment pre-"scribed for simple larceny, and " also to try all accessories to such "larcenv."

The original distinction of grand and petty larceny made it necessary, in indictments for larceny, to allege the value of the chattel stolen, in order to allot the punishment. Reg. v. Gamble, 16 M. & W. 384,

What amounts to a taking.]—To constitute larceny, there must be a taking of the property against the will of the owner. But the cashier of a bank has authority, arising from the nature of his employment, to pay the money of the bank to persons presenting genuine orders, and to judge of their genuineness. Reg. v. Prince, 38 L. J., M. C. 8; 4 L. R., C. C. 150; 19 L. T., N. S. 364; 17 W. R. 179; 11 Cox, C. C. 193.

Therefore, a cashier who, deceived by a forged order, purporting to be drawn by a customer, pays money to the payee, who presents it knowing it to be forged, thereby parts with the property in the money of the bank to the payee so as to bind his employer; and the payee is therefore not guilty of larceny, but of obtaining money by

false pretences. *Ib*.

The prisoner with another man went into the shop of the prosecutrix and asked for a pennyworth of sweetmeats, for which he put down The prosecutrix put it into a money-drawer, and put down sixpence in silver and five pence in copper in change, which the prisoner took up. The other man said, "you need not have changed," and threw down a penny, which the prisoner took up; and the latter then put down a sixpence in silver and sixpence in copper on the counter, saying, "here, mistress, give me a shilling for this." The prosecutrix took a shilling out of the money-drawer and put it on the counter, when the prisoner said to her, "you may as well give me the twoshilling-piece and take it all." The prosecutrix took from the moneydrawer the florin she had received from the prisoner, and put that on the counter, expecting she was to

receive two shillings of the prisoner's money in exchange for it. The prisoner took up the florin; and the prosecutrix took up the silver sixpence and the sixpence in copper put down by the prisoner, and also the shilling put down by herself, and was putting them into the money-drawer, when she saw she had only got one shilling's worth of the prisoner's money; but at that moment the prisoner's companion drew away her attention, and, before she could speak, the prisoner pushed his companion by the shoulder, and both went out of the shop:—Held, that the property in the florin had not passed to the prisoner, and that he was rightly convicted of larceny. Reg. v. Mc-Kale, 1 L. R., C. C. 125; 16 W. R. 800; 18 L. T., N. S. 335; 11 Cox, C. C. 32.

A carman having orders to deliver goods to a certain person, in mistake delivered them to another person, who appropriated them to his own use:—Held, that he did not part with the property in the goods by delivering them to a wrong party; and that the latter, appropriating them to his own use, was guilty of larceny. Reg. v. Little, 10 Cox, C. C. 559—Russell

Gurney.

The prisoner was the bailor, and the prosecutor the bailee of a horse. The prisoner had intrusted the horse to the prosecutor as security for a bill drawn by the former and accepted by the latter, to accommodate him. The prisoner took the horse out of the prosecutor's possession. The bill had been paid by the prosecutor, who had never been repaid by the prisoner, but was not produced at the trial:—Held, that in the absence of the bill there was no evidence to shew that the prisoner had ever parted with his property in the horse, so as to constitute his taking of it a larceny. Reg. v. Wadsworth, 10 Cox, C. C. 557 —Russell Gurney.

Fish, Dig.—18. Digitized by Microsoft®

A person stole gas for the use of a manufactory by means of a pipe, which drew off the gas from the main without allowing it to pass The gas from through the meter. this pipe was burnt every day, and turned off at night. The pipe was never closed at its junction with the main, and consequently always remained full of gas:—Held, that as the pipe always remained full, there was, in fact, a continuous taking of the gas, and not a series of separate takings. Reg. v. Firth, 1 L. R., C. C. 172; 38 L. J., M. C. 54; 17 W. R. 327; 19 L. T., N. S. 746; 11 Cox, C. C. 234.

Held, also, that, even if the pipe had not been thus kept full, the taking would have been continuous, as it was substantially all one trans-

action. Ib.

The defendant was foreman of a currier establishment; he obtained from the cashier, by fraudulent misrepresentation, a certain sum of money to be used in paying off the workmen. On the pay-roll made out by the defendant, the sum of 1l. 10s. 4d. was set down as due one of the workmen; whereas, only 11.8s. was due: the 2s. 4d. was fraudulently appropriated by him, he intending so to appropriate it at the time he received it:—Held, that he was guilty of larceny. Reg. v. Cooke, 12 C. C. 10.

Necessary Possession. ] - To constitute larceny it is necessary that the party should have had an intention to deprive the owner of his property permanently. Reg. v. Hol.loway, 2 C. & K. 942; 1 Den. C. C. 370; T. & M. 48; 3 New Sess. Cas. 410; 13 Jur. 86; 18 L. J., M. C. 60; 3 Cox, C. C. 241.

The correct definition of larceny is the wrongful or fraudulent taking and carrying away by any person of the mere personal goods of another, with a felonious intent to convert them to his (the taker's) own use, and make them his own prop- 3 Jur., N. S. 1268.

erty. The fraudulent taking being explained to be a taking without any colour of right, and the felonious intent, an intent to deprive the owner permanently of his property. Ib.

A watchmaker, to whom a watch was given by the owner for the purpose of having it regulated, disposed of the watch, and applied the proceeds to his own purposes:—Held, that this was no larceny, as the watchmaker had in the first instance obtained the possession of the watch rightfully, and as, unless there was a taking in the first instance animo furandi, no subsequent dishonest dealing with the chattel could amount to larceny. Reg. v. Thristle, 3 New Sess. Cas. 702; 2 C. & K. 842; T. & M. 204; 1 Den. C. C. 502; 13 Jur. 1035; 19 L. J., M. C. 66; S. P. Rex v. Levy, 4 C. &. P. 241.

A., servant of B., a tallow-chandler, clandestinely removed a quantity of fat, the property of B., from an upper room in B.'s warehouse to a lower room in the same place, and placed it in a pair of scales, and afterwards represented to B. that a butcher named D. had sent the fat to be purchased and paid for by B.: -Held, that A. was rightly convicted of larceny. Reg. v. Hall, 2 C. & K. 947; T. & M. 47; 1 Den. C. C. 381; 3 New Sess. Cas. 407; 13 Jur. 87; 18 L. J., M. C. 62; 3 Cox, C. C. 245.

In order to constitute larceny, the taking must be with intention to vest the property in the thief; and therefore, where servants employed by a glove-maker in finishing gloves, removed a quantity of finished gloves from one part of the master's premises to another, with intent fraudulently to obtain payment for them as for so many gloves finished by them:—Held, that they were not guilty of larceny. v. Poole, 7 Cox, C. C. 373; Dears. & B. C. C. 345; 27 L. J., M. C. 53;

A. owed 4l. 11s.  $1\frac{1}{2}d$ . to the prosecutor; and the latter having demanded payment, the prisoner said he would settle with him on behalf of A. He took out of his pocket a piece of blank paper, stamped with a sixpenny stamp, and put it upon the table, and then took out some silver in his hand. The prosecutor wrote a receipt for the sum mentioned on the stamped paper, and the prisoner took it up and went out of the room. On being asked for the money, he said, "It is all right," but never paid it :- Held, that this was not a case of larceny, the prosecutor never having had such a possession of the stamped paper as would enable him to maintain trespass. Reg. v. Smith, 2 Den. C. C. 449; 5 Cox, C. C. 533; 16 Jur. 414; 21 L. J., M. C. 111; S. P. Reg. v. Frampton, 2 C. & K. 47.

J. and W., acting in concert, and intending to defraud S., entered his shop, and by means of an artifice induced him to draw a cheque on his bankers for 42l., payable in the name of J., and then to accompany J. to the bank to see it paid, on the understanding that they were to return to finish the transaction by the payment to S. of forty-two sovereigns, and that W. was to remain at the shop till J. and S. went and returned from the bank. At the bank, by the desire of S., the banker handed four ten pounds notes and two sovereigns to J. in the presence of S. S. and J. left the bank together, and while on their way back to S.'s shop, J. went into an inn yard, and, promising to return immediately, absconded with the four ten pound notes and the two sovereigns, which he and W. (who in the meantime had gone off from the shop with the forty-two sovereigns) appropriated to their own use:—Held, that the misappropriation of the notes and two sovereigns was larceny, S. never having parted with the property and possession in

the bare custody of the money which he had carried off. Reg. v. Johnson, 2 Den. C. C. 310; T. & M. 612; 15 Jur. 1113; 21 L. J., M. C. 32; 5 Cox, C. C. 372.

M. had the charge of the proseeutor's warehouse, in which bags were kept; S. for some years had been in the habit of supplying the prosecutor with bags, which were usually placed outside the warehouse, and shortly after so leaving them either S. or his wife called and received payment for them. M. went into his master's warehouse, and clandestinely removed twenty-four bags which had been marked by his master, and placed them outside the warehouse, in the place where S. used to deposit the bags before payment for them. Soon afterwards the wife of S. came and claimed payment for these bags. The prosecutor then sent for S., who, upon being asked respecting the twenty-four bags, said they had been placed there an hour previously by him, and demanded payment for them. The jury found that the bags had been so removed in pursuance of a previous arrangement between the prisoners:—Held, that M. was rightly convicted of larceny, and that S. was an accessory before the fact to the larceny. Reg. v.Manning, Dears. C. C. 21; 17 Jur 28; 22 L. J., M. C. 21; 6 Cox, C.

The prisoner assigned his goods to trustees for the benefit of his creditors; but before the trustees had taken possession, and while the prisoner remained in possession of them, he removed the goods, intending to deprive his creditors of them. The jury found that the goods were not in his custody as agent of the trustees:—Held, that he was not guilty of larceny. Reg. v. Pratt, Dears. C. C. 360; 2 C. L. R. 774; 18 Jur. 539; 6 Cox, C. C. 373.

with the property and possession in Animus Furandi.]—To constitute them, and J. having no more than larceny, the felonious intention must

exist in the mind at the time the property is obtained; for if it is obtained by fair contract, and afterwards fraudulently converted, it is no felony. Rev v. Charlewood, 1 Leach, C. C. 409; 2 East, P. C. 689.

If, however, a fraudulent conversion takes place after the privity of contract is determined, it is felony.

To make a taking felonious it is not necessary that it should be done lucri causa; taking with an intent to destroy will be sufficient to constitute the offence of larceny, if done to serve the prisoner, or another person, though not in a pecuniary way. Rex v. Cabbage, R. & R. C. C. 292.

If a bureau is delivered to a carpenter to repair, and he discovers money in a secret drawer of it, which he unnecessarily as to its repairs breaks open, and converts the money to his own use, it is a felonious taking of the property, unless it appears that he did it with intention to restore it to its right owner. Cartwright v. Green, 2 Leach, C. C. 952; 8 Ves. 405.

A person purchased, at a public auction, a bureau in which he afterwards discovered, in a secret drawer, a purse containing money, which he appropriated to his own use. At the time of the sale no person knew that the bureau contained anything whatever:—Held, that if the buyer had express notice that the bureau alone, and not its contents, if any, was sold to him; or if he had no reason to believe that anything more than the bureau itself was sold, the abstraction of the money was a felonions taking, and he was guilty of larceny in appropriating it to his own use. But that if he had reasonable ground for believing that he bought the bureau with its contents, if any, he had a colourable property, and it was no larceny. Merry v. Green, 7 M. & W. 623.

A servant intrusted with the care but before the prisoner could take it of his master's property, and who up was apprehended:—Held, that

subsequently appropriates it to his own use, is guilty of larceny at the time he so disposes of it, and not at any previous time he may have intended to steal it, the principle of animus furandi not applying to the relation of master and servant. Reg. v. Roberts, 3 Cox, C. C. 74—Patteson.

A lady wishing to get a railway ticket (the price of which was 10s.) finding a crowd at the pay-place at the station, asked the prisoner, who was nearer in to the pay-place, to get a ticket for her, and handed him a sovereign to pay for it. He took the sovereign intending to steal it, and instead of getting the ticket, ran away:—Held, that he was guilty of larceny at common law. Reg. v. Thompson, 9 Cox, C. C. 244; L. & C. C. C. 225; 32 L. J., M. C. 53; 8 Jur., N. S. 1184; 11 W. R. 40; 7 L. T., N. S. 432.

Asportation and Appropriation.]—Where goods in a shop were tied to a string, which was fastened by one end to the bottom of the counter, and a thief took up the goods and carried them away towards the door as far as the string would permit:—Held, that being no severance, there was no asportation, and consequently that it was not a felony. Anon., 2 East, P. C. 556; 1 Leach, C. C. 321, n.

Where a prisoner set up a long bale upon end in a waggon, and cut the wrapper all the way down with intent to remove the contents, but was apprehended before he had taken anything out of it:—Held, that there was not a sufficient asportation to constitute a larceny. Rex v. Cherry, 1 Leach, C. C. 236, n.; 2 East, P. C. 556.

So where a prisoner stopped the prosecutor, who was carrying a bed on his shoulders, and told him to lay it down, or he would shoot him; and he laid it down on the ground, but before the prisoner could take it up was apprehended:—Held, that

the offence was not completed. Rexv. Farrell, 1 Leach, C. C. 322, n.

To remove a package from the head to a tail of a waggon, with a felonious intent to take it away, is a sufficient asportation to constitute a larceny; but merely to alter the position of a package on the spot where it lies is not. Rex v. Coslet, 1 Leach, C. C. 236; 2 East, P. C. **556.** See Rex v. Cherry, 1 Leach, C. C. 236, n.

A prisoner, having lifted up a bag from the boot of a coach, was detected before he had got it out; and it did not appear that it was entirely removed from the space it at first occupied in the boot, but the raising it from the bottom had completely removed each part of it from the space that specific part occupied: -Held, that it was a complete asportation. Rex v. Walsh, 1 M. C. C. 14.

A banker's clerk entered a fictitions sum in the ledger to the credit of a customer, and told him he had paid that sum to his account; and on the faith of it obtained from the customer his cheque on the bankers, which the prisoner paid to himself by bank-notes from the till, and entered in the waste-book a true account of the cheque, drawer, and notes, as paid "to a man." This was held a felonious taking of the notes from the till. Rex v. Hammon, 4 Taunt. 304; 2 Leach, C. C. 1083.

Where the jury found that one who assisted in taking another's goods from a fire in his presence, but without his desire, and who afterwards concealed and denied having them, yet took them honestly at first, and that the evil intention to convert them came on the taker afterwards, held no larceny. Rex v. Leigh, 2 East, P. C. 694; 1 Leach, C. C. 411, n.

If a person is induced to play at hiding under the hat, and stakes down his money voluntarily on the

if he wins, and to pay it if he loses, the taking up the stake so deposited by him on the table is not a felonious taking, although the taker was made to appear to win the money by fraudulent conspiracy and collusion. Rex v. Nicholson, 2 Leach, C. C. 610; 2 East, P. C. 669.

Clandestinely taking away articles to induce the owner (a girl) to fetch them, and thereby to give the prisoner an opportunity to solicit her to commit fornication with him, is not felonious. Rex v. Dickinson, R. & R. C. C. 420.

Where a party removed a valuable article, part of a wreck, from a wharf on which it had been placed, and had taken it into his own house, and had afterwards denied the possession of it:—Held, that the question for the jury on an indictment for larceny was, whether, at the time he originally took it he meant to steal it. Reg. v. Hore, 3 F. & F. 315—Martin.

Where a man drove away a flock of lambs from a field, and in doing so inadvertently drove away along with them a lamb, the property of another person, and, as soon as he discovered that he had done so sold the lamb for his own use, and then denied all knowledge of it:—Held, that as the act of driving the lamb from the field in the first instance was a trespass, as soon as he resolved to appropriate the lamb to his own use the trespass became a felony. Reg.v. *Riley*, Dears. C. C. 149; 6 Cox, C. C. 88; 17 Jur. 189; 22 L. J., M. C. 48.

Non-delivery upon request is evidence of a tortious conversion. Rexv. Semple, 1 Leach, C. C. 424; 2 East, P. C. 691.

In an indictment for stealing five pints of porter, it appeared that the prisoner was discovered standing by a barrel of porter, out of a hole in which the porter was running into a can on the ground, and that about five pints had run into the can: event, meaning to receive the take Held that there was a sufficient asportavit proved of the porter in the Reg. v. Wallis, 3 Cox, C. C. 67.

If at the time of the taking of a chattel there is no animus furandi, a subsequent fraudulent appropriation of it will not make the entire transaction larceny. The prisoner being a watchmaker received a watch from the prosecutor to be repaired, not then intending to steal it. But in a few days he went away, taking the watch with him; and when taken into custody he said, "I have disposed of the property and it is impossible to get it back":— Held, that there was no evidence of a larcehy. Reg. v. Thristle, 3 Cox, C. C. 573; 19 L. J., M. C. 66; 1 Den. C. C. 502.

A. sends his servant with a horse and cart to B. to purchase coals for him, and to bring them back. bare delivery of the coals into the servant's hands, as between him and his master, gives him the exclusive possession of them; but that exelnsive possession is determined by his depositing them in his master's eart. From that time the possession of them is in A.; and a subsequent tortious conversion of a portion of them by the servant, before they reach their ultimate destination, is lareeny. Reg. v. Reed, 2 C. L. R. 607.

A. was indicted for larceny. jury found him guilty, but recommended him to mercy, "believing that he intended ultimately to return the property":—Held, that the conviction was right. Reg. v. Trebilcock, Dears. & B. C. C. 453; 4 Jur., N. S. 123; 27 L. J., M. C. 103.

A drover employed to drive pigs, and paid the expenses of driving them, being paid wages by the day but having the liberty to drive the cattle of any other person; at the end of his journey sold the pigs, and converted the proceeds to his own use:—Held, not to be larceny, as, at the time he received the pigs into his custody, he had no intention of and that he was merely a bailee, and not a servant. Reg. v. Hey, T. & M. 209; 1 Den. C. C. 602; 2 C. & K. 983; 14 Jur. 154; 3 Cox, C. C. 582.

If a person is allowed to have possession of a chattel, and he converts it to his own use, it is not larceny, unless he had an intention of stealing when he obtained possession of it, but if he has merely the custody of a chattel, he is guilty of a larceny if he disposes of it, although he did not intend to do so at the time when he received it into his custody. Reg. v. Jones, Car. & M. 611—Cresswell. S. P. Reg. v. Evans, Car. & M. 633.

A. was supplied with a quantity of pig-iron by B. & Co., his employers, which he was to put into a furnace to be melted, and he was paid according to the weight of the metal which ran out of the furnace and became puddle-bars. the pig-iron into the furnace, and also put in with it an iron axle of B. & Co., which was not pig-iron. The value of the axle to B. & Co. was 7s., but the gain to the prisoner by melting it, and thus increasing the quantity of metal which ran from the furnace, was 1d:—Held, that, if the prisoner put the axle into the furnace with a felonious intent to convert it to a purpose for his own profit, it was larceny. Reg. v. Richards, 1 C. & K. 532 — Tindal.

# (b) On Sale or Purchase of Goods.

If a tradesman sells a stranger goods, enters them to his debit, and makes out a bill of parcels for them as goods sold, and the goods are delivered to the purchaser by the servant of the seller, who receives bills for them, it is not felony, although the tradesman sold them for ready money, never intending to give the stranger credit, and it appears that he had taken the apart. ments to which he ordered them to appropriating them to his own use, | be sent for the purpose of obtain-

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ing them fraudulently. Rex v. Parkes, 2 Leach, C. C. 614; 2 East, P. C. 671.

Where the prisoner obtained possession of a hat from the maker, which had been ordered by a third person, by sending a boy for it in the name of such third person: Held, it did not amount to larceny. Rex v. Adams, R. & R. C. C. 225.

The prisoner went into a shop in London, and purchased jewelry, and said that he would pay in cash, and the seller agreed to deliver the goods at a coach-office belonging to an inn, where the prisoner stated that he lodged. The seller made out an invoice and took the goods there, when the prisoner said he had been disappointed in receiving some money he expected by letter. Just afterwards a twopenny post letter was put into his hands, which he opened in the presence of the seller, and said he had to meet a friend at Tom's Coffee-house at seven, who would supply the money. The goods were left at the coach-office, and the seller went home. The prisoner had taken a place in the mail, but he countermanded that, and absconded with the goods. The seller swore that he considered the goods sold if he got his cash, but not before. was left to the jury to say whether the prisoner had any intention of buying and paying for the goods, or whether he gave the order merely to get possession of them to convert them to his own use. jury found the latter, and the prisoner was convicted, and the conviction was held right by the judges. Rex v. Campbell, Car. C. L. 280; 1 M. C. C. 179.

Where a person went into a shop for the purpose of purchasing a ruby pin, and, after selecting one, which was put into a box, while the young man who was serving him was absent for about a minute, took it out of the box, and put it

into the shawl department of the shop to purchase other articles, saying that he would return and pay for both together, but was allowed to go away without inquiry being made as to whether he had paid in the shawl department, and a bill, including the price of the pin, was sent the next day to the house where he was residing:—Held, on the trial of the prisoner for stealing the pin, that, under these circumstances, it was for the jury to say whether there was any intention to steal the pin, and whether there was or was not credit given for it. Reg. v. Box, 9 C. & P. 126—Patteson and Rolfe.

A., bargaining with B. about some waistcoats, said, "You must go to the lowest price, as it will be ready money." B. said, "Then you shall have them for 12s.," to which A. assented. A. then said he should put the waistcoats into his gig, which was then standing at the door; B. replied, "Very A. drove off with the waistcoats without paying for them, and absconded for two years. The jury returned the following verdict: -"In our opinion the waistcoats were parted with conditionally, that the money was to be paid at the time, and that A, took them with a felonious intent ":-Held, a larceny in A. Reg v. Cohen, 2 Den. C. C. 249.

A. and B., pretending that one of them was a sea captain and a Frenchman unable to speak English, offered to the prosecutrix a dress for sale at 25s., saying that if she would give that price for it, she should have another dress, which was produced, worth 12s., into the bargain. She agreed to this, and took a sovereign and a shilling from her pocket. Whilst she was holding the money, A. or B. opened her hand and took it out, though not forcibly. He then declined to take the other 4s., but laid down into his stock, and afterwards went | the dress first produced, and re-

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fused to let her have the other. The dress proved to be of little value:—Held, that they were properly convicted of larceny. Reg. v. Morgan, Dears. C. C. 395; 18 Jur. 1085; 6 Cox, C. C. 408.

## (c) By a Trick or a Fraud.

Getting goods delivered into a hired cart, on the express condition that the price will be paid for them before they are taken from the cart, and then getting them from the cart without paying the price, will be larceny, if the prisoner never had any intention of paying, but had, ab initio, the intention to defraud. Rex v. Pratt, 1 M. C. C. 250.

Taking goods, though the prisoner has bargained to buy, is felonious, if by the usage the price ought to be paid before they are taken, and the owner did not consent to their being taken, and the prisoner when he bargained for them did not intend to pay for them, but meant to get them into his possesion, and dispose of them for his own benefit without paying for them. Rex v. Gilbert, 1 M. C. C. 185.

If a person, having ordered a tradesman to bring goods to his house, look out a certain quantity, asks the price of them, separates them from the rest, and then, by sending the tradesman home on pretence of wanting other articles, takes the opportunity of running away with the goods so looked ont, with intent to steal them, it is larceny; for, as the sale was not completed, the possession of the property still remained in the trades-Rex v. Sharpless, 1 Leach, man. C. C. 92; 2 East, P. C. 675.

Where property, which the prosecutor had bought, was weighed out in the presence of his clerk, and delivered to his carman's servant to cart, who let other persons take away the cart and dispose of the property for his benefit jointly

with that of the others, the carman's servant, as well as the others, are guilty of larceny at common law. Rex v. Harding, R. & R. C. C. 125.

Where an owner sends goods by his servant to be delivered to A., but B. fraudulently procures the delivery to himself by pretending to be A., he is guilty of felony. Rex v. Wilkins, 2 East, P. C. 673; 1 Leach, C. C. 520.

Getting a parcel from a carrier's servant, by falsely pretending to be the person to whom it is directed, if it is taken animo furandi it is a larceny; for the servant has no authority to part with it but to the right person. Rex v. Longstreeth, 1 M. C. C. 137.

To obtain property by fraud, and under a preconcerted plan to rob, is felony, but the animus furandi must be found by the jury. Rex v. Horner, 1 Leach, C. C. 270.

Where a prisoner having offered to accommodate the prosecutor with gold for notes, the latter put down a number of bank-notes for the purpose of their being exchanged, which the prisoner took up and ran away with:—Held, a larceny, if the jury believed that he intended to run away with them at the time, and not to return the gold. Rex v. Oliver, 2 Russ. C. & M. 122—Wood.

To obtain a bill of exchange from an indorsee, under a pretence of getting it discounted, is felony, if the jury finds that the indorsee did not intend to leave the bill in the prisoner's possession without the money, and that he undertook to discount it with a preconcerted design to convert its produce to his own use. Rex v. Aickles, 1 Leach, C. C. 294; 2 East, P. C. 675.

Where, in a case of ring-dropping, the prisoners prevailed on the prosecutor to buy the share of the other party, and the prosecutor was prevailed on to part with his money,—intending to part with it for

ever, and not with the possession of it only:—Held, that this was not a larceny. Reg. v. Willson, 8 C. &

P. 111—Coleridge.

A. was treating B. at a beerhouse, and A. wishing to pay, put down a sovereign desiring the landlady to give him change; she could not do so; and B. said that he would go out and get change. A. said, "You won't come back with the change." B. replied, "Never fear." A. allowed B. to take up the sovereign, and B. never returned either with it or the change: —Held, no larceny, as A. having permitted the sovereign to be taken away for the purpose of being changed, he could never have expected to receive back the specific coin, and had therefore divested himself of the entire possession of Reg. v. Thomas, 9 C. & P. 741—Coleridge.

A. went to a shop, and asked a boy there to give him change for a half-crown; the boy gave him two shillings and sixpenny worth of copper. The prisoner held out a half-crown, which the boy touched, but never got hold of it, and the prisoner ran away with the two shillings and the copper:—Held, a larceny of the two shillings and the copper. Rex v. Williams, 6 C. &

P. 390—Park.

A landlord went to his tenant (who had removed all his goods) to demand rent amounting to 12l. 10s., taking with him a receipt ready written and signed; the tenant gave him 21., and asked to look at the receipt. It was given to him, and he refused to return it or to pay the remainder of the rent. It was proved by the landlord, that, at the time he gave the tenant the receipt, he thought the tenant was going to pay him the rent; and that he should not have parted with the receipt unless he had been paid all the rent; but that when he put the receipt into the tenant's

hand he never expected to have the receipt again; and that he did not want the receipt again, but wanted his rent to be paid:—Held, a larceny; and that the fact of the tenant giving the 21. made no difference. Reg. v. Rodway, 9 C. & B. 784. Coloridae

P. 784—Coleridge.

Where a prisoner took a packet of diamonds to a pawnbroker, with whom he had previously pledged a brooch; and having agreed with the shopman for the amount of the loan on the diamonds, sealed them up and received the amount, deducting the amount for which the brooch was pledged; but, instead of giving the packet of diamonds to the shopman, gave him a packet of similar appearance, containing only glass:—Held, that it was not larceny, but only a fraud. Rex v. Meilheim, Car. C. L. 281.

If a pawnbroker's servant, who has a general authority from his master to act in his business, delivers up a pledge to the pawner, on receiving a parcel from the pawner, which he supposes contains valuables he has just seen in the pawner's possession in a similar parcel, the receipt of the pledges by the pawner is not a larceny. Rex v. Jackson, 1 M. C. C. 119.

A. went to B.'s shop, and said that he had come from C. for some hams, and at the same time produced a note in the following terms: "Have the goodness to give the bearer ten good thick sides of bacon, and four good showy hams, at the lowest price. I shall be in town on Thursday next, and will call and pay you. Yours, &c., B. thereupon delivered the The note was forged. hams to A. and A. had no such authority from C.:—Held, that A. was not guilty of larceny. Reg. v. Adams, Den. C. C. 38.

A gipsey, obtaining money and goods under pretence of practising witchcraft, without an intention to return them, is properly indicted for larceny. Reg. v. Bunce, 1 F. & F. 523—Channell.

Wheat, not the property of the prosecutor, but which had been consigned to him, was placed in one of his storehouses, under the care of a servant, E., who was to deliver it only to the orders of the prosecutor, or his managing clerk. A., who was in the employ of the prosecutor, obtained the key of the storehouse from E., and was allowed to remove a quantity of the wheat, upon his representation to E. that he had been sent by the clerk, and was to take the wheat This repreto a railway station. sentation was false, and he subsequently disposed of the wheat:— Held, that he was guilty of a larceny of the wheat. Reg. v. Robins, Dears. C. C. 418; 18 Jur. 1058. 7

The fraudulent taking e a railway ticket for the purper to fusing it to travel, and so definding the railway company, is larceny, although the ticket would, if used, be returned to the company at the end of the journey. Reg. v. Beech-

ani, 5 Cox, C. C. 181.

On the trial of an indictment for larceny it appeared that the prisoner having given the prosecutor an order for certain goods, they were sent by a servant with directions not to part with them without the money; on the way the servant was met by the prisoner, who said the goods were for him and took them, giving two counterfeit half-crowns in payment:—Held, that he was properly indicted for larceny. Reg. v. Webb, 5 Cox, C. C. 154.

A., in the hearing of B. told his servant to go to H. and pay him some money, upon which B. offered to take the money for A., falsely stating that he lived only six doors from H. Induced by the offer of B., A. delivered the money to him to carry to H. B. appropriated the

money to his own use. He was indicted for larceny of the money, and found guilty, the jury stating that their verdict was grounded on their belief that he had obtained the money by a trick, intending at the time to appropriate it to his own use:—Held, that the conviction was right. Reg. v. Brown, Dears. C. C. 616; 2 Jur., N. S. 192.

J., owner of a watch, placed it with the seller to be regulated. The seller had no authority to deliver it to any one but J., or some one commissioned by him to receive it. the fraud of the prisoner, the seller was induced to believe that J. had desired the watch to be sent by post, inclosed in a letter to J., to the care of the postmaster at B. The postmaster through the fraud of the prisoner, was induced to deliver the letter containing the watch to him, believing him to be J. or his agent:—Held, that the prisoner, having appropriated the watch to his own use, was guilty of larceny of it from the owner. Reg. v. Kay, Dears. & B. C. C. 231; 3 Jur., N. S. 546; 26 L. J., M. C. 119.

At a colliery, where coal was sold by retail, it was the practice for the carts, when loaded, to be taken to a weighing machine in the colliery yard, where they were weighed, and the price of the coal paid. went to the yard and asked for a load of soft coal; his eart was accordingly loaded by a servant of the prosecutor with that description of coal, and he was then left to take it to be weighed, and pay for it. He, however, covered over the top of the coal in the cart with slack (an inferior description of coal), and then went to the weighing machine, and told the clerk he had got slack; the clerk accordingly weighed the cart, and charged for its contents as slack. B. paid for the coal as slack, and went away with it:— Held, that he was guilty of larceny of the soft coal. Reg. v. Bramley. L. & C. 21; 8 Cox, C. C. 468; 7 Jur., N. S. 473; 9 W. R. 555; 4 L. T., N. S. 309.

B., a broker, having large dealings with the prosecutors, Russian merchants, in October entered into a contract for the purchase of 343 casks of tallow which were expected to arrive by the Hesper, in the ordinary course of trade. The tallow arrived accordingly on the 5th of December, and in due course the transaction should have been completed within fourteen days, and notice was given to B. of the arrival of the tallow, and he was called upon to complete the bargain. He requested that the tallow might be allowed to remain in the docks for a short time. This was On January 28th the manager for the prosecutors called on him, and insisted on the completion of the contract, and B. said he would pay for the tallow on the following day. On the next day B. sent his clerk to the prosecutors' counting-house, and obtained delivery orders for the tallow, and tendered to the prosecutors a crossed cheque on a bank of London for the price of the tallow. Immediately on obtaining possession of the delivery orders, he sent them to the docks, and transferred the property into fresh warrants, and when the cheque was presented there were no assets:—Held, not to be a larceny of the delivery orders by a trick, but a lawful possession of them obtained by reason of the prosecutors giving to B. credit in respect of the crossed cheque. Reg. v. North, 8 Cox, C. C. 433—Pollock.

By a Trick or a Threat. ]—A. acted as auctioneer at a mock auction. He knocked down some cloth for 26s. to B., who had not bid for it, as A. knew. B. refused to take the cloth or to pay for it; A. refused to allow her to leave the room unless she paid. Ultimately she paid the 26s. to A. and took the cloth. She object to Digitized by Microsoft®

paid the 26s. because she was afraid. A. was indicted for, and convicted of, feloniously stealing these 26s.:— Held, that the conviction was right, because, if the force used to B. made the taking a robbery, larceny was included in that crime; if the force was not sufficient to constitute a robbery, the taking of the money nevertheless amounted to larceny, as B. paid the money to A. against her will, and because she was afraid. Reg. v. McGrath, 1 L. R., C. C. 205; 21 L. T., N. S. 543; 18 W. R. 119; 37 L. J., M. C. 7.

Held, also, that, under the circumstances, it was not necessary that the jury should be asked whether B. paid the money against her will, as from the evidence it was clear that there could have been no doubt in the minds of the jury that the money was so paid.

### (d) On Breach of Contract to sell.

A drover of cattle was employed by a grazier in the country to drive eight oxen to London; his instructions were, that, if he could sell them on the road, he might; and those he did not so sell he was to take to a particular salesman in Smithfield market, who was to sell them for the grazier. The drover sold two on the road, and instead of taking the remaining six to the salesman, drove them himself to Smithfield market, and sold them there, and received the money, which he applied to his own use: - Held, that he could not be convicted either of larceny or embezzlement. Reg. v. Goodbody, 8 C. & P. 665—Littledale and Parke.

On an indictment against a farmer for stealing sheep entrusted to him for agistment, and which he had sold, concealing for upwards of a month the fact of the sale, there being some evidence that he had, or might have supposed that he had, some implied authority to sell, or that the prosecutor would not object to it if he realised a good

price, the jury was directed that the question was, whether at the time of the sale the prisoner had any reason to suppose he might sell. Reg. v. Leppard, 4 F. & F. 51— Erle.

A., carrying on business on his own account, entered into an engagement with B. to sell goods for him, and for certain purposes to be B. entrusted A. with his servant. certain goods to dispose of in a particular way. A. converted them to his own use:—Held, that it was a question for the jury to say whether, when A. received the goods, he had the intention of misappropriating Reg. v. Waller, 10 Cox, C. C. 360—Russell Gurney, Recorder.

### (e) By Hirers of Property.

Obtaining a post-chaise by hiring, with a felonious intent to convert it to the use of the hirer, is felony, although the contract for hiring was not for any definite time. Rex v. Semple, 1 Leach, C. C. 420; 2 East, P. C. 691.

If a man who is hired to drive cattle sells them, it is lareeny; for he has the custody only, and not the right to the possession; his possession is the owner's possession, though he is a general drover, at least if he is paid by the day. v. M'Namee, 1 M. C. C. 368. Reg. v. Hey, 3 Cox, C. C. 582.

A person hired to drive cattle to a particular place, who sells the same and absconds with the money, is guilty of stealing, though the intention to sell is not conceived till after taking possession of the cattle. Reg. v. Jackson, 2 M. C. C. 32.

If goods are delivered to a person on hire, and he takes them away, animo furandi, he is guilty of larceny, although no actual conversion of them by sale or otherwise is Reg. v. Janson, 4 Cox, C. proved. C. 82—Coleridge.

A. hired a horse and gig with

offered them for sale, but no sale took place: — Held, nevertheless, that he was guilty of larceny. Ib.

To constitute a larceny by a party to whom goods have been delivered on hire, there must not only be an original intention to convert them to his own use, but a subsequent actual conversion; and a mere agreement by the hirer to accept a sum offered for the goods is not such a conversion, if the party who makes the offer does not intend to purchase unless his suspicions, as to the honesty and right of the vendor to sell, are removed. Reg. v. Brooks, 8 C. & P. 295—Tindal.

A., the owner of a boat, was employed by B., the captain of a ship, to carry a number of wooden staves ashore in his boat; B.'s men were put into the boat, but were under the control of A., who did not deliver all the staves, but took one of them away to the house of his mother: - Held, that this was a bailment of the staves to A., and not a charge only; and that a mere non-delivery of the staves would not have been a larceny in A.; but that if A. separated one of the staves from the rest, and carried it to a place different from that of its destination, with intent to appropriate it to his own use, that was equivalent to a breaking of bulk, and therefore would be sufficient to constitute a larceny. Rex v. Howell, 7 C. & P. 325—Patteson.

A. hiring a horse and riding it away from a livery-stable, and afterwards selling it, cannot be convicted of larceny unless he had the intention of stealing the horse when he originally hired it, and that is a question for the jury. Reg. v. Cole, 2 Cox, C. C. 340—Patteson and Coleridge.

(f) From Bailees at Common Law.

If a man steals his own goods from his own bailee, though he has the felonious intention of converting | no intent to charge the bailee, but them to his own use, and afterwards | his intent is to defraud the king,

yet if the bailee had an interest in the possession, and could have withheld it from the owner, the taking is a larceny. Rex v. Wilkinson, R. & R. C. C. 470.

If a part-owner of property steals it from A., in whose sole custody it is, and who is solely responsible for its safety, he is guilty of larceny, and the property is well laid in A. alone, although he is also a partowner of the property stolen. v. Webster, L. & C. 77; 9 Cox, C. C. 13; S. P., Rex v. Bramley, R. & R. C. C. 478.

The prosecutor's horse had been impounded. The prisoner pretended that he had been sent by the prosecutor, paid the pound-keeper's demand, received the horse, and made off with it. He was indicted for larceny. The indictment had two counts, one laying the property in the prosecutor and the other in the pound-keeper:—Held, that the pound-keeper was a servant of the owner, and, therefore, that the offence was larceny. Reg. v. Simpson, 2 Cox, C. C. 235—Williams.

# (g) By Bailees at Common Law.

If the master or owner of a ship steals some of the goods delivered to him to carry, it is not larceny in him unless he takes the goods out of their packages. Rex v. Madox, R. & R. C. C. 92.

If one employed to carry goods for hire appropriates them to his own use, but does not break bulk, this is no larceny, although the person so employed was not a common carrier, but was only employed in this particular instance. Rex v. Fletcher, 4 C. & P. 557—Patteson.

But if a person not being a servant of the party who intrusts him, receives a parcel containing notes to take to a coach-office, and abstracts the notes on his way there, and applies them to his own use, he is guilty of larceny. Reg. v. Jenkins, 9 C. & P. 38—Bosanquet and Gurney.

to B., and sent them by the prisoner's cart; the prisoner took away one of the trusses, which was found in his stable, but not broken up:— Held, no larceny, as the prisoner did not break up the truss. Rex v. Pratley, 5 C. & P. 533—Parke.

If a parcel is accidentally left in a hackney-coach, and the coachman, instead of restoring it to the owner, detains it, opens it, destroys part of its contents, and borrows money on the rest, he is guilty of felony. Rex v. Wynne, 1 Leach, C. C. 413; 2 East, P. C. 664, 697; S. P., Rex v. Sears, 1 Leach, C. C. 415, n.

A. was convicted of larceny under the following circumstances: he was a common carrier, and employed by the prosecutor to carry a cargo of coals from a ship to a coal-yard belonging to the prosecutor. He carted the coals to the first-mentioned coal-yard, and was engaged for several days in carting them thence to the prosecutor's other yard. left the first-mentioned coal-yard on one of those days with two carts and a waggon, all laden with coals; before he arrived at the other yard, he delivered the two cart loads to a third person on his own account, but he duly delivered the waggon-load at the prosecutor's yard:—Held, that the conviction was wrong, the coals having been delivered to A. as a carrier, and there having been no breaking of bulk or other determination of the bailment. Reg. v. Cornish, Dears. C. C. 425; 6 Čox, C. C. 432.

If the owner parts with the possession of goods for a special purpose, and the bailee, when that purpose is executed, neglects to return them, and afterwards disposes of them; if he had not a felonious intention when he originally took them, his subsequent withholding and disposing of them will not constitute a new felonious taking, or make him guilty of felony. Rex v. Banks, R. &. R. C. C. 441.

If a warehouseman has several A. consigned three trusses of hay | bags of wheat delivered to him for

safe custody, and he takes the whole of the wheat out of one bag, it is no less a larceny than if he had severed a part from the residue of the wheat in the same bag, and had taken only that part, leaving the remainder of the wheat in the bag. Rev v. Bra-

zier, R. &.R. C. C. 337.

Prisoner was indicted for stealing a pair of boots, the property of A., and acquitted. She was then indicted again for stealing the same boots, laid as the property of B., and pleaded autrefois acquit. A. was a boy fourteen years of age, living with and assisting B., who was his father; the boots were the property of B., but at the time they were stolen by the prisoner, A. had temporarily, in his father's absence, the charge of the stall from which they were stolen:—Held, first, that A. was not a bailee, and that the ownership of the boots could not be properly laid in him. Reg. v. Green, Dears. & B. C. C. 113; 2 Jur., N. S. 1146; 26 L. J., M. C. 17; 7 Cox, C. C. 187.

Held, secondly, that the plea of autrefois acquit could not be sustained, notwithstanding the power of amendment given by 14 & 15

Viet. e. 100. *Ib.* 

S., bailee of P.'s mare, took her to certain livery-stables, and paid P. a balance due to him, after deducting money due for the keep of the mare, and told P. that she was at the livery-stables. P. sent word to the stable-keeper not to let S. have the mare again, and twice refused S. permission to ride the mare. S., after P. had left town, obtained the mare from the ostler at the livery-stables by a false statement, and never returned her:—Held, that S. was rightly convicted of larceny. Reg. v. Stear, 2 C. & K. 988; I Den. C. C. 349; T. & M. 11; 13 Jur. 41; 18 L. J., M. C. 30.

# (h) By Pawning Property.

The defence to a charge of steal-

property, intending to redeem and then restore it, is a defence not to be generally encouraged, though, if clearly made out in proof, it may be allowed to prevail. The rule for the jury's guidance in such a case seems to be, that, if it clearly appears that the prisoner only intended to raise money upon the property for a temporary purpose, and at the time of pledging the article had a reasonable and a fair expectation of being enabled shortly, by the receipt of money, to take it out and restore it, he might be acquitted; but otherwise, not. v. Phetheon, 9 C. & P. 553—Gur-

On a charge of larceny it was proved that the prisoner had taken property from ready-furnished lodgings that were let to her, and pawned it:—Held, that the fact that she had frequently pawned and aftwards redeemed portions of the same property, was no answer to There must not only the charge. be the intent, but also the ability to redeem, to render such defence available. Reg. v. Medland, 5 Cox,

C. C. 292.

Upon an indictment for larceny, it was proved that a box of plate having been deposited with the prisoner for safe custody, he broke it open, and took out a part of the plate, which he offered to a pawnbroker as a security for 50l. offer was declined, but he afterwards pledged the whole box of plate with another person as security for 200l. When he was called upon to restore the plate to the owner, he had not the means of redeeming it, and was taken into custody. The jury found him guilty, but recommended him to mercy, believing that he intended ultimately to return the property:—Held, that he was rightly convicted of larceny at common law; because the jury had found a verdict of guilty which was well warranted ing, that the prisoner pledged the | by the evidence; and though they

had recommended him to mercy on the ground that he intended ultimately to restore the property, that expression was not necessarily inconsistent with the verdict, and ought not to be considered equivalent to a finding, that at the time when he took the plate wrongfully he took it for the purpose of merely making a temporary use of it. Reg. v. Trebilcock, 7 Cox, C. C. 408; Dears. & B. C. C. 453; 4 Jur., N. S. 123; 27 L. J., M. C. 103.

The prisoner was employed by a tailor to sell clothes for him about a particular county; the price of each article was fixed, and the clothes were entrusted to the prisoner on the arrangement that he was to sell them at the price fixed, he receiving 3s. in the pound on the amount received for them, and being bound to bring back the remainder of the clothes which were  $\mathbf{T}$ he prisoner received from the prosecutor a parcel of clothes on these terms, but, instead of selling them, he fraudulently pawned a portion of them for his own benefit, and afterwards fraudulently misappropriated the residue to his own use: -Held, that the original bailment of the goods to the prosecutor was determined by the unlawful act of pawning part of them, and that the subsequent fraudulent misof the remainder appropriation amounted to larceny. Reg. v. Poyser, 2 Den. C. C. 233; T. & M. 559; 15 Jur. 386; 20 L. J., M. C. 191; 5 Cox, C. C. 241.

## (i) Means of facilitating or detecting Larceny.

The assent of a prosecutor to give facility to the commission of a larceny, for the purpose of detecting the offenders, does not do away with the felony, although the property was not taken against his will. Rex v. Egginton, 2 Leach, C. C. 913; 2 East, P. C. 494, 666; 2 B. & P. 508.

Overtures were made by a person to the servant of a publican, to induce him to join him in robbing his master's till. The servant communicated the matter to the master, and, some weeks afterwards, the servant, by the direction of his master, opened a communication with the person who had made the overtures, in consequence of which he to the master's premises. came The master having previously marked some money, it was, by his direction, placed upon the counter by the servant, in order that it might be taken up by the party who had come for that purpose. It was so taken up by him:—Held, larceny in such party. Reg. v. Williams, 1 C. & K. 195.

## (j) In case of Lost Property.

If a man finds goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them with intent to take the entire dominion over them, really believing, when he takes them, that the owner cannot be found, it is not larceny. Reg. v. Thurborn, 1 Den. C. C. 387; T. & M. 67; 2 C. & K. 831; 13 Jur. 499; 18 L. J., M. C. 140; S. C. Reg. v. Wood, 3 New Sess. Cas. 581; 3 Cox, C. C. 453.

But if he takes them with a like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is lareeny. *Ib*.

A. picked up the purse of B., which contained money, on a turn-pike road, along which B. had previously traveled by coach. A. converted the purse and its contents to his own use:—Held, no larceny; and that A. was liable civilly, but not criminally. Reg. v. Mole, 1 C.

& K. 417—Parke.

If there had been any mark on the purse by which the owner could have been known, it would have been otherwise. *Ib*.

If a person drops any chattel,

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and another finds it, and takes it | away with the intention of appropriating it to his own use, and only restores it because a reward is offered, he is guilty of larceny. Reg.v. Peters, 1 C. & K. 245—Rolfe. S. P. Reg. v. Reed, Car. & M. 306.

The only cases in which a party finding a chattel of another can be justified in appropriating it to his own use, is where the owner cannot be found, or where it may be fairly said that the owner has aban-

doned it. Ib.

Where a bank-note is lost, and is found by a person who appropriated it to his own use:—Held, that the jury is not to be directed to consider at what time the prisoner, after taking it into his possession, resolved to appropriate it to his own use, but whether at the time he took possession of it he knew, or had the means of knowing, who the owner was, and took possession of it with intent to steal it; for if his original possession of it was an innocent one, no subsequent change of his mind, or resolution to appropriate it to his own use, would amount to larceny. Reg. v. Preston, 2 Den. C. C. 353; T. & M. 641; 16 Jur. 109; 21 L. J., M. C. 41; 5 Cox, C. C. 390.

A. found a watch, and subsequently converted it to his own use; the jury found him "not guilty of stealing the watch, but guilty of keeping possession of it in the hope of reward, from the time he first had the watch." A verdict of guilty was entered at the trial:—Held, wrong, and that on these facts and this finding it was no larceny. Reg. v.York, 2 C. & K. 841; 1 Den. C. C. 335; T. & M. 20; 12 Jur. 1078; 18 L. J., M. C. 38; 3 Cox, C. C. 181.

A purse, containing money, was left by a purchaser on the prisoner's A third person afterwards pointed out the purse to the prisoner, supposing it to be hers. She put it

cealed it, and on the return of the owner denied all knowledge of it. The jury found that the prisoner took up the purse knowing it was not her own, and intending at the time to appropriate it to her own use, but that she did not know who the owner was at the time she took it:—Held, that as the purse was not lost property, the prisoner was properly convicted of larceny. Reg. v. West, Dears. C. C. 402; 3 C. L. R. 86; 18 Jur. 1031; 24 L. J., M. C. 4; 6 Cox, C. C. 415.

If a man finds lost property and keeps it, and at the time of finding it has no means of discovering the owner, he is not guilty of larceny, because he afterwards has means of finding him, and nevertheless retains the property to his own use. Reg. v. Dixon, Dears. C. C. 580; 25 L. J., M. C. 39; 7 Cox, C. C.

35.

Semble, if a man finds property which has been lost, and appropriates it to himself, he is not guilty of larceny for failing to take steps to discover the owner, unless he saw the article drop from the owner, or unless it has the owner's name upon it, or some circumstances of the sort occurred which afforded the finder an immediate means of knowing who the owner was at the moment when he picked it up and examined it. Ib.

A finder of lost property is not guilty of larceny in appropriating it to his own use, unless he has a felonious intent at the time of the find-Reg. v. Christopher, Bell, C. C. 27; 5 Jur., N. S. 24; 28 L. J., M. C. 35; 7 W. R. 60; 32 L. T.

150; 8 Cox, C. C. 91.

was indicted for stealing a bank-note. The prosecutor paid for an article purchased at A.'s shop, out of a purse in which were two bank-notes. Next morning he discovered the loss of one of the notes, and applied to A., who told him he knew nothing of the note. in her pocket and afterwards con- He, however, afterwards stated he had given gold for it on the day of the loss. The jury, in answer to questions put to them, found—first, that the note was dropped by the prosecutor in the shop, and that A. found it there; secondly, that he at the time he picked up the note did not know, nor had he reasonable means of knowing, who the owner was; thirdly, that he afterwards acquired knowledge of who the owner was, and after that he converted the note to his own use; fourthly, that he intended, when he picked up the note in the shop, to take it to his own use, and deprive the owner of it, whoever that owner might be; and, fifthly, that he believed, at the time he picked up the note, that the owner could be found. verdict of guilty was thereupon entered:—Held, that he was properly convicted. Reg. v. Moore, L. & C. 1; 8 Cox, C. C. 416; 7 Jur., N. S. 172; 30 L. J., M. C. 77; 9 W. R. 276.

A prosecutor found a cheque, and, being unable to read, shewed The prisoner it to the prisoner. told him that it was only an old cheque of the Royal British Bank, and kept it. He afterwards made excuses for not giving it up to the prosecutor, witholding it from him in the hopes of getting the reward that might be offered for it:-Held, that these facts did not shew such a taking as was necessary to constitute larceny. Reg. v. Gardner, L. & C. 243; 9 Cox, C. C. 253; 8 Jur., N. S. 1217; 32 L. J., M. C. 35; 11 W. R. 96; 7 L. T., N. S. 471.

The law with regard to the finder of lost property does not apply to the case of property of a passenger accidentally left in a railway carriage, and found there by a servant of the company; and such servant is guilty of larceny if, instead of taking it to the station or superior officer, he appropriates it to his own see. Reg. v. Pierce, 6 Cox, C. C.

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A. was indicted for stealing iron which he had taken from a canal while the canal was being cleaned. Property found on such occasions in the canal, if identified, was returned by the company to the owner; otherwise it was kept by the company. A. was not in the employ of the company:—Held, that the property in the iron was rightly laid in the company. Reg. v. Rowe, Bell, C. C. 93; 5 Jur., N. S. 274; 28 L. J., M. C. 28; 7 W. R. 236; 32 L. T. 339.

The finder of a lost sovereign in the high road, who, at the time of the finding, had no reasonable means of knowing who the owner was, but who at that time intended to appropriate it even if the owner should afterwards become known, and to whom the next day the owner was made known, when he refused to give it up, is not guilty of larceny. Reg. v. Glyde, 37 L. J., M. C. 107; 1 L. R., C. C. 139; 16 W. R. 1174; 18 L. T., N. S. 613; 11 Cox, C. C. 103.

The prisoner's child found six sovereigns in the street, which she brought to the prisoner. The latter counted it, and told some bystanders that the child had found a sovereign, and offered to treat them. The prisoner and the child then went down the street to the place where the child had found the money, and found a half-sovereign and Two hours afterwards the a bag. owner made hue-and-cry in the vi-On the same evening the prisoner was told that a woman had lost money; the prisoner told her informant to mind her own business. and gave her half-a-sovereign for herself. The prisoner admitted, on arrest, that she had got the money from the child:—Held, that these facts did not warrant a conviction for larceny, as there was nothing to shew that at the time of the finding the prisoner had reason to think that the owner could be found. Reg. v. Deaves, 11 Cox, C. C. 227;

Fish. Dig.—19.

Recency of Possession of Stolen Property.

The question of what is or is not a recent possession of stolen property, is to be considered with reference to the nature of the article stolen. Therefore, where two ends of woolen cloth in an unfinished state, consisting of about 20 yards each, are lost, and were in the possession of the prisoner two months after their being stolen, and still in the same state, it was held that this was a possession sufficiently recent to call on the prisoner to shew how he came by the property. Rex v. Partridge, 7 C. & P. 551—Patteson.

Where a person on whom stolen property is found gives to those who find him in possession of it a reasonable account of how he came by it, it is incumbent on the prosecutor to shew that that account is untrue. Reg. v. Crowhurst, 1 C. & K. 370 -Alderson. S. P., Reg. v. Smith, 2 C. & K. 207—Denman.

Aliter, if that account is unreasonable or improbable on the face of it. Ib.

Where a stolen horse was found in the possession of the prisoner six months after it was stolen, and there was no other evidence against him, the judge would not call on him for his defence, as the possession was not sufficiently recent. Reg. v. Cooper, 3 C. & K. 318; 16 Jur. 750— Maule. S. P., Rex v. Adams, 3 C. & P. 600; Reg. v. Crittenden, 6 Jur. 267.

The prisoner was found coming out of a warehouse, where a large quantity of pepper was kept, with pepper of a similar quality in his He had no right to be possession. in the warehouse, and on being discovered said, "I hope you will not be hard with me," and took some pepper out of his pocket and threw it upon the ground. There was no evidence of any pepper having been missed from the bulk:—Held, that there was sufficient evidence to go to

v. Burton, Dears. C. C. 282; 18 Jur. 157; 23 L. J., M. C. 52.

A. was indicted for stealing and receiving articles of dress. It was proved that the prosecutor's house was broken open, and the articles stolen, on the 2nd November. On the night of the 4th November, A. sold them openly at a public-house. He was subsequently apprehended, and then told the constable that C. and D. brought the goods to his house, and that the woman who kept it (Mrs. W.) would say so, and that being on the spree, he sold them and spent the money. C. and D. were thereupon apprehended. was convicted of stealing articles taken at the same time from the prosecutor's house, and D. was dis-The constable went to the woman W., and made inquiries as to A.'s statement. No evidence of the result of such inquiry was Neither C., D. nor W. received. was called by the prosecution to contradict A.'s statement, and he was convicted of stealing:—Held, that as there was some evidence upon which the jury might convict, the conviction must be affirmed. v. Wilson, Dears. & B. C. C. 157; 3 Jur. N. S. 167; 26 L. J., M. C. 45.

Where stolen property is traced to the possession of a prisoner, and he at the time gives an account of how he became possessed of it, it is not the duty of the prosecution to disprove that account where circumstances exist in the case which render that account uureasonable, or its truth improbable. In such a case the burthen of calling the parties vouched is cast on the prisoner. Reg. v. Harmer, 2 Cox, C. C. 487

Pollock.

Recent possession of stolen property is evidence, either that the person in possession stole the property, or that he received it knowing it to have been stolen, according to the other circumstances of the case. Reg. v. Langmead, L. & C. 427; 9 the jury of the corpus delicti. Reg. | Cox, C. C. 464; 10 L. T., N. S. 350.

Where property of insignificant! value is traced to the possession of the prisoner fifteen months after the loss, and he gives an account of his possession of it which is not inconsistent with the right of the prosecutor to it, he ought not to be called on to account for that possession in a court of justice. Where, however, the prisoner, when lost property is found in his possession, and identified by the prosecutor after so long an interval, claims it as his own property by right of purchase made before the alleged theft, and a continuous possession up to the time of discovery, he may be called on to account for that possession, notwithstanding the interval which has elapsed between the loss and discovery, for then he disputes the identity of the thing found with that loss. Reg. v. Evans, 2 Cox, C. C 270-Alderson.

A man was found with dead fowls in his possession, of which he could give no account, and was tracked to a fowl-house where a number of fowls was kept, and on the floor of which were some feathers corresponding to the feathers of one of the fowls found on the prisoner, from the neck of which feathers had been  $\mathbf{removed}$ . The fowl-house, which was closed over night, was found open in the morning. The spot where he was found was 1,200 yards from the fowl-house, and the prosecutor, not knowing the number of fowls kept, could not swear that he had lost any:-Held, that there was evidence to support a conviction for larceny. Reg. v. Mockford, 17 L. T., N. S. 582; 16 W. R. 375; 11 Cox, C. C. 16. See 32 & 33 Vict. c. 99, s. 11.

# (1) Servants taking Masters' Corn for feeding Horses.

By 26 & 27 Vict. c. 103, s. 1, servauts taking their masters' corn, when, in the some time to their orders, for the purpose of giving the same to their masters' bigitized by Microsoft®

"horses or other animals, shall not by reason thereof be deemed guilty of felony, but shall be liable to imprisonment, or to pay a pecuniary penalty."

Before this Enactment.]—Servants who clandestinely took their masters' oats, with intent to give them to their masters' horses, and without any intent to apply them to their own private benefit, were guilty of larceny, even though they were not answerable at all for the condition of the horses. Reg. v. Privett, 2 C. & K. 114; 1 Den. C. C. 193; S. P., Reg. v. Handley, Car. & M. 547; Reg. v. Morfit, R. & R. C. C. 307.

## (m) By Husband and Wife.

Where, on the trial of a man and a woman for larceny, it appears that they addressed each other as husband and wife, and passed and appeared as such, and were so spoken of by the witnesses for the prosecution, it will be for the jury to say whether they are satisfied that they are in fact husband and wife, even though the woman pleaded to the indictment, which described her as a single woman. Reg. v. Woodward, 8 C.& P. 561—Patteson.

In such a case, a female ought not to be indicted as a single woman. *Ib*.

Stealing, by the wife of a member of a friendly society, money of the society deposited in a box in the husband's custody, kept locked by the stewards, is not larceny. Rex v. Willis, 1 M. C. C. 375.

A woman and her husband and P. were indicted jointly for burglary and receiving. The jury found P. guilty of housebreaking, and the woman and her husband of receiving. Part of the stolen property was found in the house where she and her husband lived together; and she, in the absence of her husband, some time after the housebreaking, was seen dealing with part of the stolen things, when she made a state-

ment importing a knowledge that they had been stolen. The judge declined to leave it to the jury to find whether she received the stolen property from her husband or in his absence:—Held, that the conviction could not be supported. Reg. v. Wardroper, Bell, C. C. 249; 8 Cox, C. C. 284; 6 Jur., N. S. 232; 29 L. J., M. C. 116; 8 W. R. 217; 1 L. T., N. S. 416.

Husband and wife were jointly indicted for stealing. The husband was in the employ of the prosecutors, and was seen near the spot when the property stolen arrived at the prosecutors'. The next day the wife was seen near the spot where her husband was engaged on his work. She was at a spot where there was no road, with a bundle concealed, and was followed home. On the following day she pledged the stolen property at two different places. At one of the places where she was not known she pledged in a false name:—Held, that upon this evidence the wife might be convicted of stealing the property. Reg. v. Cohen, 18 L. T., N. S. 489; 16 W. R. 941; 11 Cox, C. C. 99— C. C. R.

The prisoner's wife hired a bedstead at 1s. per week, and within a fortnight afterwards the prisoner sold it to a broker, his wife being present at the sale. Two days after the sale the wife paid 1s. for a week's hire, being all that was paid. There was no evidence that the prisoner knew that the bedstead had only been hired:—Held, that a conviction for larceny could not be sustained. Reg. v. Halford, 18 L. T., N. S. 334; 16 W. R. 731; 11 Cox, C. C. 88— C. C. R.

## (n) By Wife's Paramour.

There is such a unity of interest between husband and wife, that ordinarily the wife cannot steal the goods of the husband, nor can an indifferent person steal the goods of the husband by the delivery of the merely upon evidence of found there; but it wo wise if the goods could any way to his person Reg. v. Rosenberg, 1—Denman and Parke.

wife; and if the wife delivers the goods of the husband to an indifferent person, for that person to convert them to his own use, this is no larceny; but if the person to whom the goods are delivered by the wife is an adulterer, it is otherwise, and an adulterer can be properly convicted of stealing the husband's goods, though they are delivered to him by the wife. Reg. v. Tollett, Car. & M. 112—Coleridge.

If no adultery has actually been committed by the parties, but the goods of the husband are removed from the house by the wife and the intended adulterer, with an intent that the wife should elope with him, and live in adultery with him, this taking of the goods is, in point of

law, larceny. Ib.

If a wife elopes with an adulterer who takes her clothes with them, the taking is a larceny; and it is as much a larceny to steal her clothes, which are her husband's property, as it would be to steal anything else that is his property. *Ib*.

If a man and the owner's wife jointly take away the husband's goods, it may be larceny in the man, though he was acting jointly with the wife. Rex v. Tolfree, 1 M. C.

C. 243.

A prisoner cannot be found guilty of stealing goods, if it appears that he could not otherwise get them than by the delivery of the prosecutor's wife, in which case it may be presumed that he received them from her. Rex v. Harrison, 1 Leach, C. C. 47; 2 East, P. C. 559.

An adulterer cannot be convicted of stealing the goods of the husband brought by the wife alone to his lodgings, and placed by her in the room in which the adultery was afterwards committed, merely upon evidence of their being found there; but it would be otherwise if the goods could be traced in any way to his personal possession. Reg. v. Rosenberg, 1 C. & K. 233—Denman and Parke.

A. assisting the wife of B. to take B.'s goods, which are afterwards used by them in common, without the consent of B., is evidence to warrant a conviction against A. of larceny. Reg. v. Thompson, 1 Den. C. C. 549; T. &. M. 294; 14 Jur. 488.

Delivery by the wife of her husband's goods to her adulterer, he having knowledge that she had taken them without her husband's authority, is sufficient to support an indictment for larceny against the adulterer. Reg. v. Featherstone, Dears. C. C. 369; 2 C. L. R. 774; 18 Jur. 538; 23 L. J., M. C. 127; 6 Cox, C. C. 376.

If a person merely assists a married woman, who has not committed, or intended to commit, adultery, in carrying away the goods of her husband without the knowledge and consent of the latter, though with intent to deprive the latter of his property, he cannot be convicted of stealing the goods. Reg. v. Avery, Bell, C. C. 150; 5 Jur., N. S. 577; 28 L. J., M. C. 185; 7 W. R. 431; 32 L. T. 138; 8 Cox, C. C. 184.

B. watching his opportunity when the prosecutor was absent, took away the prosecutor's wife, and with her several boxes filled with the prosecutor's property. B. and the wife were found living together in adultery. The property was all in their lodgings:—Held, that he was indictable for stealing the property of the prosecutor, as he took the property under such circumstances that the assent of the husband to the taking could not be presumed. Reg. v. Berry, Bell, C. C. 95; 5 Jur., N. S. 228; 28 L. J., M. C. 70; 7 W. R. 240; 32 L. T. 329.

The prisoner, who lodged in the house of the prosecutor, agreed with his wife that they should go away, and live together in adultery. The prisoner left the house, and was followed by the wife of the prosecutor.

They were afterwards overtaken on the road in company together, the prisoner carrying a bandbox containing the wife's wearing apparel. He was convicted upon an indictment for stealing the property so found upon him, the property being laid as that of the husband:—Held, that the conviction could not be sustained. Reg. v. Fitch, Dears. & B. C. C. 187; 3 Jur., N. S. 524; 26 L. J., M. C. 169; 7 Cox, C. C. 269.

Where a man assists a wife in carrying off what he knows to be her husband's property, and goes away with her with the intention of committing adultery, he is guilty of larceny; and the facts that he was in the husband's service, and acted under the wife's directions in removing the property, afford no answer to the charge. Reg. v. Mutters, L. &. C. 511: 10 Cox, C. C. 50; 34 L. J., M. C. 54; 13 W. R. 326; 11 L. T., N. S. 642.

A wife took her husband's goods from Notting Hill, and she was found committing adultery with the prisoner at Liverpool, the husband's goods being then in the prisoner's possession. There was no evidence that they were under his control at any place within the jurisdiction of the Central Criminal Court: — Held, that that court had no jurisdiction to try the prisoner for the offence. Reg. v. Prince, 11 Cox, C. C. 145—Russell Gurney.

## (o) By Clerks or Servants.

By 24 & 25 Vict. c. 96, s. 67, "whosever, being a clerk or serv-ant, or being employed for the purpose or in the capacity of a "clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the posses-sion or power of his master or employer, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding

"fourteen years and not less than "five years (27 & 28 Vict. c. 47), "or to be imprisoned for any term "not exceeding two years, with or "without hard labour, and with or "without solitary confinement, and, "if a male under the age of sixteen "years, with or without whipping." (Former provision, 7 & 8 Geo. 4, c. 29, s. 46.)

The prisoner was occasionally employed as a clerk to the prosecutors, and having received from them a cheque on their bankers, payable to a creditor, for the purpose of giving it to the creditor, appropriated it to his own use:—Held, a larceny of the cheque. Rex v. Metcalf, 1 M. C. C. 433.

It is larceny in the servant of the drawer of a cheque on bankers to whom it is given to deliver to a third person, to appropriate the value to his own use. Reg. v. Heath,

2 M. C. C. 33.

Where a servant by a false pretence induces his master to give him a cheque as agent of a creditor of his master with a view of its being handed over to that creditor, and the servant appropriates the cheque to his own use, he cannot be indicted for stealing it. Reg. v. Essex, Dears. & B. C. C. 371; 4 Jur., N. S. 16; 27 L. J., M. C. 20; 7 Cox, C. C. 384.

If a servant takes his master's property, and hands it over to another as a gift, it is as much a felony as if he takes it to a pawnbroker and pledges it. Reg. v. White, 9 C. & P. 344—Gurney and Erskine.

It is larceny for a person hired for the special purpose of driving sheep to a fair to convert them to his own use, he having the intention so to do at the time of receiving them from the owner. Rex v. Stock, 1 M. C. C. 87.

If the owner of goods employs a person, not in his service, to take them to a particular place, shews

them to a customer, and brings them back, without authorizing him to sell them to or leave them with the customer, and he, instead of taking the goods to the specific place, sells them for his own advantage, he will be guilty of larceny, inasmuch as the felonious intent came upon him at a time when he had the custody only, and not the possession, of the goods. Reg. v. Harvey, 9 C. & P. 353—Alderson.

The driver of a glass-coach hired for the day is not the servant of the party hiring it, so as to bring him within 7 & 8 Geo. 4, c. 29, s. 46. Rex v. Haydon, 7 C. & P. 445—

Patteson and Gurney.

If a servant receives from his master goods to sell, and appropriates them to his own use, he is not guilty of embezzlement but larceny. Reg. v. Hawkins, 4 Cox, C. C. 224.

The prisoner was employed by the prosecutor to make up canvas bags at his (the prisoner's) own house. The canvas was cut out at the shop of the prosecutor and taken away by the prisoner. A portion of it was duly worked up and returned, the remainder was converted by him to his own use:—Held, that he could not be convicted of larceny.—Reg. v. Saward, 5 Cox, C. C. 295.

A. had agreed to buy straw of B., and sent his servant C. to fetch it; C. did so, and put down the whole quantity of straw at the door of A.'s stable, which was in a courtyard of A., and then went to A. and asked him to send some one with the key of the hay-loft, which was over the stable, which A. did, and C. put part of the straw into the hay-loft, and carried the rest away to a public-house, and sold it: -Held, that this carrying away of the straw by C., if done with a felonious intent, was a larceny, and not an embezzlement, as the delivery of the straw to A. was complete

when it was put down at the stabledoor. Reg. v. Hayward, 1 C. & K. 518—Tindal.

Where a servant received money from his master in order to pay the wages of work-people therewith, and in the book in which the account of the monies so paid was kept by the master entries were found charging the master with more money than the servant had actually disbursed; but there was no proof that he had ever delivered this account to his master: -Held, that this did not amount to larceny in the servant. Reg. v. Butler, 2 C. & K. 340—Wightman.

On the trial of an indictment for larceny as servant, it appeared that the prisoner lived in the house of the prosecutor, and acted as nurse to his sick daughter, the prisoner having board and lodging and occasional presents for her services, but no wages. While the prisoner was so residing, the prosecutor's wife gave the prisoner money to pay a coal bill, which money the prisoner kept, and brought back a forged receipt to the coal bill:-Held, that the prisoner was not the servant of the prosecutor, but that this was a larceny of the money. Reg. v. Smith, 1 C. & K. 423—Coleridge.

A. employed B. to take his barge from S. to E., and paid him his wages in advance, and gave him a separate sum of three sovereigns to pay the tonnage dues. B. took the barge sixteen miles, and paid tonnage dues to an amount rather under 21., and appropriated the remaining sovereign to his own use: —Held, a larceny. Reg. v. Goode, Car. & M. 582; S. P., Reg. v. Bea-man, Car. & M. 595—Patteson.

The prisoner, who was not otherwise in the prosecutor's service, was employed by the prosecutor to drive six pigs from C. to U. On the way he left one at Mr. M.'s stating that it was tired, and he told the prosecutor that he had done so. The prosecutor told the prisoner to go the prisoner having determined his

and ask Mr. M. to keep the pig for The prisoner went to Mr. M.'s and sold the pig to Mr. M.:— Held, no larceny. Reg. v. Jones, Car. & M. 611—Cresswell.

The prisoner was a servant in the employment of grocers who were in the habit of purchasing kitchen-It was his duty to receive and weigh it, and, if the chief clerk was in the counting-house, to give the seller a ticket specifying the weight and price of the article, and the name of the seller, which ticket was signed with the initials of the prisoner. The seller, on taking this ticket to the chief clerk, received the price of the kitchen-stuff. the absence of the chief clerk the prisoner had himself authority to pay the seller, and afterwards, on producing the ticket to the chief clerk, was repaid. The prisoner had, on the day mentioned in the indictment, presented a ticket to the chief clerk, purporting to contain all the specifications, and marked with the prisoner's initials, and demanded the sum of 2s. 3d., which he alleged that he had paid for kitchen-stuff. He received the money and appropriated it to his own use, and it was afterwards discovered that no such person as was described in the ticket had ever sold any such article to the prosecutors, but that the ticket was fraudulently made out and presented by the prisoner:—Held, a case of false pretences, and that an indictment for larceny could not be sustained. Reg. v. Barnes, 2 Den. C. C. 59; T. & M. 387; 14 Jur. 1123; 20 L. J., M. C. 34.

The prisoner was sent with his master's cart for some coals. coals were delivered to the prisoner and deposited in the cart, their price being entered to the master's account. On the road home the prisoner disposed of a portion of the coals:—Held, that this was larceny of the coals and not embezzlement,

exclusive possession of the coals when they were deposited in the cart, and the possession from that Reg. v. time being in the master. Reed, Dears. C. C. 257; 2 C. L. R. 607; 18 Jur. 67; 23 L. J., M. C.

G. was indicted for larceny. The evidence shewed that he was the prosecutor's servant; that it was his duty to receive and pay monies for the prosecutor, and make entries of such receipts and payments in a book which was examined by the prosecutor from time to time; that the prisoner on one occasion shewed à balance in his favour of 21., by taking credit for payments falsely entered in the book as having been made by him, when in fact they had not been made by him, and that the prisoner received from his master the sum of 21., as a balance due to him. He was convicted:— Held, that the conviction was wrong. Reg. v. Green, Dears. C. C. 323; 2 C. L. R. 603; 18 Jur. 158; 6 Cox, C. C. 296.

Where a person gave his servant a 5l. note to get changed, and he got the note changed, and made off with the change:—Held, to be no larceny, but an embezzlement. Rex v. Sullens, Car. C. L. 319; 1 M. C.

C. 129.

A shopman was authorized to sell his master's goods at the price marked upon them, but at nothing He sold a pair of trousers at a lower price than that marked, and embezzled the money:-Held, not to be a larceny of the trousers. Reg. v. Brackett, 4 Cox, C. C. 274

-Wightman.

A miller's foreman, employed to sell goods and receive the money, sold some to a customer, who paid him for them. He did not enter the sale in his books, or account for the price, according to the usual course of business, but concealed the whole transaction, and appropriated the money:—Held, that there being an actual binding sale as be-

tween the buyer and the employer, he could not be convicted of stealing the goods, although he was guilty of embezzling the price. Reg. v. Betts, Bell, C. C. 90; 5 Jur., N. S. 274; 28 L. J., M. C. 69; 7 W. R. 239; 32 L. T. 339; 8 Cox, C. C. 140.

The prisoner was tried upon an indictment which charged, that whilst the servant of A. he stole money belonging to A. The evidence was, that the prisoner was the servant of B., and that the money belonged to B., but was in the possession of A. as the agent of B. He was accordingly convicted of simple larceny:—Held, that the conviction was right. Reg. v. Jennings, Dears. & B. Č. C. 447; 4 Jur., N. S. 146; 7 Cox, C. C. 397.

The prisoner was employed to conduct an office in connection with a branch bank. His salary included his services and the providing an office, which was in his own house, where he carried on another busi-The office was fitted up at the expense of the bank, and in it there was an iron safe, the property of the bank, into which it was his duty, when night came, to put any money received during the day which had not been required. manager of the branch bank kept a duplicate key of this safe. It was the prisoner's duty to receive money from customers, to be put to their accounts with the branch bank, and to pay cheques. He furnished accounts to the manager, and it was his duty to pay over weekly to the manager the excess not required at the office. He also received monies from the branch as required, which were entered in his weekly accounts. In September, 1855, his accounts were audited, and his cash found correct; and from that time up to September, 1857, he continued to furnish weekly accounts which were correct in their statements of receipts and payments, but no examination of the balances appearing from those accounts to be in his hands took place. At the latter date, however, he was about 3,000l. short in his accounts, and admitted that he had taken that amount. The jury found the prisoner guilty of larceny as a clerk, in having stolen some money received from customers, which before such stealing had been placed in the safe, and made the subject of a weekly account:—Held, that it was not necessary that the jury should find any specific amount to have been stolen on any particular day, and that there was evidence to go to the jury of larceny.  $Reg. \ {
m v.} \ Wright,$ Dears. & B. C. C. 431; 4 Jur., N. S. 313; 27 L. J., M. C. 65; 7 Cox, C. C. 413.

It was the duty of a clerk to the prosecutors to ascertain daily the amount of dock and town dues payable by the prosecutors on the exportation of their goods, and, having received the money from the prosecutors' cash-keeper, to pay it over to those who were entitled to it; the clerk falsely represented that a sum of 3l. 10s. 4d. was due on a certain day, whereas, in truth, a sum of 11. 3s. only was due, and, having obtained the larger sum from the cash-keeper, converted the difference to his own use:—Held, that he was not guilty of larceny, but might have been convicted of obtaining money by false pretences. Reg. v. Thompson, L. & C. 233; 9 Čox, C. C. 222; 32 L. J., M. C. 57; 8 Jur., N. S. 1162; 11 W. R. 41; 7 L. T., N. S. 393.

A servant's duty was to give out materials to be wrought up, and pay the workmen when the work was finished, and for this purpose he received cash from his masters, and at the end of each week he accounted with them for sums so received and paid. The cash was kept by him, but he was not authorized to apply the money in any other way. He paid C. 13s., and

fraudulently charged his employers as having paid 14s. 8d., and appropriated the 1s. 8d. to his own use:
—Held, to amount to larceny. Reg. v. Low, 10 Cox, C. C. 168; 14 W. R. 286; 13 L. T., N. S. 642—C. C. R.

A person employed as a distraining broker, if engaged in the service of the prosecutor only, and paid a salary by him, is a servant within 24 & 25 Vict. c. 96, s. 67. Reg. v. Flanagan, 10 Cox, C. C. 561—Russell Gurney.

A man was indicted for larceny as a servant. He was groom in the service of the prosecutor, and was supplied by his master with money to pay for the keep of the stallion of which he had the charge. In the course of his employment he stated that he had paid three sums of 7s. 2d., 7s. 4d. and 7s. 6d., to one Thomas Payne, which was untrue, and appropriated these sums to his own use:—Held, that it was not larceny. Reg. v. Dartnell, 20 L. T., N. S. 1020—Byles.

Money was given to the prisoner for the purpose of paying turnpike tolls at two gates on his journey. Twelve days afterwards, on being asked if he had paid the toll at one of the gates, the prisoner said he had not—that he had gone by a parish road which only crossed the road at the gate, and so no toll was payable there, and that he had spent the money on beer for himself and his mates. The prisoner having been convicted of larceny of the money, but it not appearing on a case reserved as to whether the facts proved a larceny, that the question of felonious intention had been distinctly left to the jury, the court quashed the conviction. Reg. v. Deering, 20 L. T., N. S. 680; 17 W. R. 807; 11 Cox, C. C. 298 -C. C. R.

The prisoner lived with the prosecutor as his wife, and was authorized by him to draw and sign cheques and bills in his name, he being blind and unable to do this himself. He entrusted her with a large sum of money to pay into the bank, which she did not do, but appropriated it to her own use:—Held, that the question, whether she was a servant to the prosecutor, was one for the jury. Reg. v. Warren, 10 Cox, C. C. 359—Chambers, C. S.

A., carrying on business on his own account, entered into an engagement with B. to sell goods for him, and for certain purposes to be his servant. B. entrusted A. with certain goods to dispose of in a particular way. A. converted them to his own use:—Held, that it was a question for the jury to say whether, when A. received the goods, he had the intention of misappropriating them. Reg. v. Waller, 10 Cox, C. C. 360—Russell Gurney, Recorder.

## (p) By Fraudulent Bailees.

Who are.]-By 24 & 25 Vict. c. 96, s. 3, "whosover, being a bailee "of any chattel, money, or valua-"ble security, shall fraudulently "take or convert the same to his "own use, or the use of any person "other than the owner thereof, al-"though he shall not break bulk or "otherwise determine the bailment, "shall be guilty of larceny, and "may be convicted thereof upon "an indictment for larceny; but "this section shall not extend to "any offence punishable on sum-"mary conviction." (Former provision, 20 & 21 Vict. c. 54, s. 4.)

A bailee charged with fraudulently converting bailed property under 20 & 21 Vict. c. 54, s. 4, was indicted in the ordinary form as for larceny, with a conclusion contraforman: — Held, good. Reg. v. Haigh, 7 Cox, C. C. 403—Wightman

A bailment under this section has reference to something depos-

ited with another to be returned in specie, and does not apply to the case of a treasurer of a money club, who is under no obligation to return to the members the specific coins intrusted to him. Reg. v. Hassall, L. & C. 58; 8 Cox, C. C. 491; 7 Jur., N. S. 1064; 30 L. J., M. C. 175; 9 W. R. 708; 4 L. T., N. S. 561; S. P., Reg. v. Garrett, 8 Cox, C. C. 368; 2 F. & F. 14—Willes.

A person who receives money on behalf of another, does not thereby become a bailee of the money. Reg. v. Hoare, 1 F. & F. 647—Wightman.

B. was charged in a first count with larceny as a bailee. In a second count with larceny: B. was a married woman, living with her husband, and at the request of a lodger in her husband's house took charge of his box, containing mon-She afterwards fraudulently stole the money, and converted it The husband to her own use. knew nothing whatever of the transaction:—Held, that either she was a bailee, and guilty under the first count; or, if not a bailee, she was guilty of larceny under the second count. Reg. v. Robson, L. & C. 93; 9 Cox, C. C. 29; 8 Jur., N. S. 64; 31 L. J., M. C. 22; 10 W. R. 61; 5 L. T., N. S. 402.

A bailment under the 21 & 22 Vict. c. 54, s. 4, does not necessarily mean a bailment by contract, but a bailment by licence is sufficient. *Ib.*—Martin.

A., being somewhat tipsy, lay on the ground, partly asleep, and while in that state saw the prisoner take his watch out of his pocket, which he took no steps to prevent, believing that the prisoner, with whom he had been acquainted for some time, was acting solely from friendly motives:—Held, that this evidence would not support a charge of larceny at common law, but disclosed a sufficient bailment

to bring the case within the above enactment. Reg. v. Reeves, 5 Jur., N. S. 716—Crowder.

A., who was a trustee of a friendly society, was appointed by a resolution of the society to receive money from the treasurer, and carry it to the bank. He received the money from the treasurer's clerk, but instead of taking it to the bank, he applied it to his own purposes. He was indicted for stealing, as bailee of the money of the treasurer, and also for a common law larceny, the money being laid as that of the treasurer. The 18 & 19 Viet. e. 63, s. 18, vests the property of friendly societies in the trustees, and directs that in all indictments the property shall be laid in their names:—Held, that A. could not be convicted either as a bailee or of a common law larceny. Reg. v. Loose, Bell, C. C. 259; 29 L. J., M. C. 132; 8 Cox, C. C. 302 ; 6 Jur., N. S. 513 ; 8 W. R. 422 ; 2 L. T., N. S. 254.

Indictment charged the prisoner with obtaining 26l. 5s., the monies of H., by false pretences. According to the prosecutor's evidence, he was induced to part with the money on the prisoner's statement that he was to pay 135l. for a pair of carriage horses. No such averment was contained in the indictment. It was urged that the prisoner might be convicted of larceny as a bailee; but the money having been obtained by fraud, and the prosecutor having parted with all control as well over it as with the possession:-Held, that there was no bailment, and that he could not be Reg. v. Hunt, 8 Cox, convicted. C. C. 495 - Russell Gurney, Recorder.

The prosecutor gave the prisoner money to buy half a ton of coals for He bought the coals, and took a receipt in his own name, and used his own horse and eart to fetch them, but on the way home he appropriated

and afterwards pretended to the prosecutor that he had delivered to him the full quantity:—Held, that even if it was necessary to shew a specific appropriation of the coals to the prosecutor, there was sufficient evidence of such appropriation, and that the prisoner was rightly convieted of lareeny as a bailee. v. Bunkall, L. & C. 371; 9 Cox, C. C. 419; 10 Jur., N. S. 216; 33 L. J., M. C. 75; 12 W. R. 414; 9 L. T., N. S. 778.

To sustain a charge of larceny by a bailee it is necessary to prove some act of conversion inconsistent with the purposes of the bailment. v. Jackson, 9 Cox, C. C. 505—Mar-

A carrier who, receiving money to procure goods, obtained and duly delivered the goods, but fraudulently retained the money, may be convicted of larceny as a bailee. v. Wells, 1 F. & F. 109—Erle.

A carrier employed by the proseentor to deliver in his (the prisoner's) cart a boat's eargo of coals to persons named in a list, to whom only he was authorized to deliver them, and, having fraudulently sold some of the coals, and appropriated the proceeds, is properly convicted of larceny as a bailee. Reg. v. Davies, 14 W. R. 679; 14 L. T., N. S. 491 -C. C. R.

Husband and Wife. —A married woman, at the request of A., took charge of his box containing money, and afterwards fraudulently stole the money. The husband had nothing to do with any part of the matter:—Held, that she was guilty either of fraud as a bailee or of a lareeny. Reg. v. Robson, 31 L. J., M. C. 22; L. & C. 93; 9 Cox, C. C. 29; 8 Ju., N. S. 64; 10 W. R. 61; 5 L. T., N. S. 402.

Where husband and wife were jointly indicted for lareeny, as bailees, and it was proved that they took charge of the property, but the wife a portion of the coals to his own use, | alone disposed of it afterwards:-

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Held, that neither could be convicted; the wife, because she could not be a bailee; the husband, because he was not proved to have taken part in the conversion. Reg. v. Denmour, 8 Cox, C. C. 440—Martin.

## (q) By parties in concert.

Where two planned to rob the prosecutrix of some coats, and one got her to go with him that he might get some money to buy them of her, and she left the coats with the other, who immediately absconded with them:—Held, that the receipt of the one amounted to a felonious taking of the coats by both. Rex v. County, 2 Russ. C. & M. 230, 329—Bayley.

Where the evidence against two, indicted for stealing oats, was that one of them took the oats from the prosecutor's sacks, and placed them under a cart, and the other came up a few minutes after, and said, "It is all right," and put the oats in a cart, and took them to his house; on an objection that there was no evidence to connect the latter with the original taking:-Held, that the evidence shewed one transaction in which both concurred. Reg. v. Kelly, 2 Cox, C. C. 171-Maule.

J. had employed M. to load sacks of oats, the property of J., from a vessel in the trams of K., who was to carry them on the trams to the warehouse of K. By previous concert between M. and K., oats were taken by M. from two of the sacks and put into a nose-bag in the absence of K., and hidden under a tram. K. returned in a few minutes, and took the nose-bag, and its contents, from under the tram, and took them away, M. being then within three or four yards of him:--Held, that both were principals in the larceny, and that K. was not a receiver; and that, as it was all one transaction, and both had concurred in it, and both had been present at some

be convicted as principals in the larceny. Reg. v. M' Carthy, 2 C. & K. 379—Maule.

2. By Persons in the Queen's Service, or by the Police.

By 24 & 25 Viet. c. 96, s. 69, "whosoever being employed in the "public service of her Majesty, or "being a constable or other per-"son employed in the police of any "county, city, borough, district or "place whatsoever, shall steal any "chattel, money or valuable secur-"ity belonging to or in the posses-"sion or power of her Majesty, or "intrusted to or received or taken "into possession by him by virtue "of his employment, shall be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept in "penal servitude for any term not "exceeding fourteen years, and not "less than five years (27 & 28 Vict. "c. 47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment."

An indictment, framed upon 2 & 3 Will. 4, c. 4, s. 1, alleged that A., being employed in the public service, and intrusted, by virtue of such employment with the receipt of money the property of the Queen, fraudulently applied to his own use 5,000l. so received, and feloniously stole the same. It was proved that he was an officer of inland revenue, and received certain taxes; that it was his duty to make returns to inspectors, and that these returns, when rendered, shewed a much larger balance in his hands than he was allowed to retain. At last his accounts were examined, and a statement extracted from them was produced to him, shewing a balance in his hands of 5,214l, and a fraction, which he admitted to be correct. He was then asked if he was prepared to hand over that balance, or part of the transaction, both could any part of it, and he said he was there was a balance of 300l. against him from the previous Monday, which was a receipt day at T. A. then took out a sum of money less than the 300l., and, on being asked what he had done with the rest, said he had spent it in an unfortunate speculation:--Held, that the evidence in respect of the 300l. was sufficient to sustain a conviction. Reg. v. Moah, Dears. C. C. 626; 2 Jur., N. S. 213; 25 L. J., M. C. 66.

#### By Post-Office Servants and others.

## (7 Will 4 & 1 Vict. c. 36, s. 26.)

What amounts to a Stealing. ]-Fraudulently obtaining the mail bags by delivery from one in the post-office to the prisoner, is a stealing out of the post-office. Rex v. Pearce, 2 East, P. C. 603.

The horse mail bags, being left by the mail rider after he had taken possession of them for a temporary purpose for two minutes, were stolen during his absence:—Held, within the 52 Geo. 3, c. 143, s. 3. Rex v. Robinson, 2 Stark, 485.

Servants. ]—S. delivered two 51. notes to D., the wife of the postmaster of C., at which post-office money orders were not granted, and asked her to send them by G., the letter-carrier, from C. to W., in order that he might get two 5l. money orders for them at the W. post-office. D. gave these instructions to G., and put the notes, by his desire, into his bag. G. afterwards took the notes out of the bag, and pretended, when he got to the W. post-office, that he had lost them. It was found by the jury that G. had no intention to steal the notes when they were given to him by D .: Held, that this taking of the notes by G. was not a larceny, the notes not being in his possession in the course of his duty as a post-office servant. Reg. v. | then sealed, and stamped with the

He was then reminded that | Glass, 2 C. & K. 395; 1 Den. C. C. 215.

> S., post-mistress of G., received from a letter unsealed, but addressed to B., and with it 11. for a post-office order, 3d. for the poundage on the order, 1d. for the postage, and 1d. for the person who got the order. S. gave the letter, unsealed, and the money, to the prisoner, who was the letter-carrier from G. to L., telling him to get the order at L. and enclose it in the letter, and post the letter at L. The prisoner destroyed the letter, never procured the order, and kept the money:—Held, that he was indictable for stealing, embezzling and destroying a post letter, he being at the time in the employ of the postoffice. Reg. v. Bickerstaff, 2 C. & K. 761—Cresswell.

A person employed in the postoffice committed a mistake in the sorting of two letters containing money, and he threw the letters unopened, and the money, down a water-closet, in order to avoid a penalty attached to such mistakes: -Held, that there was a larceny of the letters and money, and also a secreting of the letters. Reg. v. Wynn, 2 C. & K. 859; 1 Den. C. C. 365; T. & M. 32; 3 New Sess. Cas. 414; 13 Jur. 107; 18 L. J., M. C. 51; 3 Cox, C. C. 271.

If a person, while engaged in gratuitously assisting a postmaster, at his request, in sorting the letters, steals one of them, he is liable to the severer penalties imposed by 7 Will. 4 & 1 Vict. c. 36, s. 26, as a person employed under the postoffice. Reg. v. Reason, 2 C. L. R. 120; 23 L. J., M. C. 11; 6 Cox, C. C. C. 227; Dears. C. C. 226; 17 Jur. 1014.

A. was indicted for stealing a post letter containing money, he being a sub-sorter at the general An inspector of the post-office. post-office had put some marked money into a letter, which was

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usual postage stamp. It was addressed to Mr. H., and delivered in at the window of the post-office to another inspector, who handed it to a third. This last locked it up for the night, and on the following morning gave it to a sorter, who, according to his instructions, secretly placed it among other letters, which A. in due course would have to sort. He opened and secreted the letter, abstracting the money, which was found upon him. was no part of the ordinary duty of the inspector to receive letters at the window, but the whole scheme was arranged for the detection of A.:—Held, that he could not be convicted of stealing a post-Reg. v. Shepherd, Dears. C. C. 606; 2 Jur., N. S. 96; 25 L. J., M. C. 52.

A letter carrier, whose duty it was, in case he was unable to deliver any letter, to bring it to the post-office on his return from delivery, not having delivered a letter containing money, gave no account of it, and being asked why he had not delivered it, produced it unopened, and the coin safe within, from his trousers pocket, stating, untruly, that the house where it ought to have been delivered was Upon an indictment for stealing the letter, the jury found him guilty, and that he detained it with the intention of stealing it: Held, that so dealing with the letter amounted to larceny. Reg. v. Poynton, 9 Cox, C. C. 249; L. & C. 247; 8 Jur., N. S. 1218; 32 L. J., M. C. 29; 11 W. R. 73; 7 L. T., N. S. 434.

A person employed at a receiving house of the general post-office to clean boots, and to assist in tying up the letter bag, was not a servant of the post-office within 52 Geo. 3, c. 143, s. 2. Rex v. Pearson, 4 C. & P. 572—Littledale and Bosanquet.

S. was employed by a post-mis-

tress to carry letters from Dursley to Berkeley, at a weekly salary paid him by the post-mistress, but which was repaid to her by the post-office:—Held, that S. was a person employed by the post-office within 52 Geo. 3, c. 143, s. 2. Rex v. Salisbury, 5 C. & P. 155—Patteson.

Receiving-Houses.]—A receiving-house was not a post-office within 52 Geo. 3, c. 143, s. 2, but it was a place for the receipt of letters, and the whole shop was to be considered as the place for the receipt of letters, and not the mere letter-box; and therefore if a person took a letter and put it on the shop-counter of the receiving-house or gave it to one of the persons belonging to the shop there, that was a putting the letter into the post. Rex v. Pearson, 4 C. & P. 572—Littledale and Bosanquet.

To constitute the offence of stealing a letter from a place for the receipt of letters, under 52 Geo. 3, c. 143, s. 2, it was essential that the letter should be carried out of the shop which was the place for the receipt of letters; and, therefore, if a person took a letter and stole its contents, without taking the letter out of the shop, that was not an offence, within that statute. Ib.

Letters and Post-Office Orders.]—The president of a department in the post-office put a half-sovereign into a letter, on which he wrote a fictitious address, and dropped the letter, with the money in it, into the letter box of a post-office receiving-house, where the prisoner was employed in the service of the post-office. The prisoner stole the letter and money:—Held, that this was a stealing of a post letter, containing money, and that this was not the less a post letter within 7 Will. 4 & 1 Vict. c. 36, s. 26, be-

cause it had a fictitious address. Reg. v. Young, 2 C. & K. 466; 1 Den. C. C. 194.

R., an officer in the post-office in London, intending to try the honesty of G., the post-mistress of Enstone, went to Oxford, and having put marked money into a letter, directed "Thomas Hicks, Radford Lane, Exeter," placed this letter in a bundle of letters in the Oxford post-office, which was to go to the Enstone post-office. This letter going in the bundle of letters to the Enstone post-office, G. took out the marked money, and denied any knowledge of the letter. R. neither knew any person named Thomas Hicks, nor that there was any such place as Radford Lane in Exeter: -Held, that this was not a stealing of a post letter, but that the taking of the money by G. was a larceny. Reg. v. Gardener, 1 C. & K. 628—Pollock.

A post-office being at an inn, a person was sent to put a letter, containing promissory notes, into the the post. He took it to the inn, with money to pre-pay the postage; he did not put it into the letterbox, but laid the letter, and the money upon it, upon a table in the passage of the inn, in which passage the letter box was, and he pointed out the letter to the prisoner, who was a female servant at the inn, who said she would "give it to them." The prisoner, who was not authorized by the inn-keeper, her master, to receive letters for him, stole the the letter and its contents:—Held, that this was not a post-letter within 7 Will. 4 & 1 Vict. c. 36, ss. 27, 28; and that the stealing of the letter and its contents by the prisoner was not an offence within either of those sections. Reg. v. Harley, 1 C. & K. 89—Patteson.

An inspector secretly put a letter, prepared for the purpose, containing a sovereign, amongst some letters, which a letter carrier, suspected of

letter-carrier stole the letter and the sovereign:—Held, not rightly convicted of stealing a post-letter, such letter not having been put in the post in the ordinary way; but rightly convicted of larceny of the sovereign, laid as the property of the Postmaster-General. Reg. v. Rathbone, 2 M. C. C. 242; Car. & M. 220.

A servant, being sent with a letter, and a penny to pre-pay the postage of it at a receiving-house, found the door shut, and in consequence put the penny inside the letter, and fastened it in by means of a pin, and then put the letter into an unpaid letter-box. A messenger in the General Post-office stole this letter, with the penny in it:—Held, that he might be convicted of stealing a post-letter containing money, although the money was not put into the letter for the purpose of being conveyed, by means of it, to the person to whom it was addressed. Reg. v. Mence, Car & M. 234— Denman.

A post-office order, for the payment of 5l. in the ordinary form, is a warrant and order for the payment of money, and may be so described in an indictment for larceny. Reg.v. Gilchrist, 2 M. C. C. 233; Car. & M. 224.

A. Brought a letter, enclosing a 10*l.* note, to a district receivinghouse, and desired that it might be registered. The post-mistress took the money for the registration, and, being busy at the time, requested A. to call again. In the meantime she put the letter under a glass case, to which the prisoner had access. When the letter was taken up, for the purpose of being despatched, it was found that the note had been extracted:—Held, that the letter was a post-letter. Reg. v. Rogers, 5 Cox, C. C. 293—Cresswell.

A letter containing a post-office order, directed to John Davies, was misdelivered to John Davis, one of Not being able to the prisoners. dishonesty, was about to sort. The | read, he took it to W. D., the other

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prisoner who read it to him. He then said the letter and order were not for him, but was advised by W. D. to keep them and get the money. Both prisoners then went to the post-office, obtained the money and appropriated it to their own use:—Held, that a conviction for larceny of the order could not be supported. Reg. v. Davies, Dears. C. C. 640; 2 Jur., N. S. 478; 25 L. J., M. C. 91; 7 Cox, C. C. 104.

Where a prisoner had obtained letters from the post-office by falsely representing that he was sent for them by the person to whom they were addressed:—Held that if he then meant to steal them he might be convicted of larceny. Reg. v. Gillings, 1 F. & F. 36—Channell.

Indictment.]—In an indictment on 7 Will. 4 & 1 Vict. c. 36, s. 26, for secreting a post letter, it is not necessary to state the purpose for which the letter was secreted. Reg. v. Wynn, 2 C. & K. 859; 1 Den. C. C. 365; T. & M. 32; 18 L. J., M. C. 51.

Evidence.]—Possession by a letter carrier of a bank note some months after it has been sent by post and lost, is not sufficient evidence of a felonious stealing by him, although not accounted for otherwise than by his mere assertion that he found it. Reg. v. Smith, 3 F. & F. 123—Bramwell.

At the trial of a person on 52 Geo. 3, c. 143, s. 2, for embezzling a letter containing a bill of exchange, he being at the time employed under the post-office, it was sufficient to prove that such person acted in the service of the post-office, and it was not necessary to go into proof of his appointment. Rex v. Rees, 6 C. & P. 606—Parke.

## 4. In a Dwelling-house.

To the value of £5.]—By 24 & 25 Vict. c. 96, s. 60, "whosoever shall "steal in any dwelling-house any

"chattel, money, or valuable secur-"ity (as to the interpretation of this "word, see sect. 1) to the value in "the whole of 5l. or more, shall be "guilty of felony, and being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding fourteen years, "and not less than five years (27 "& 28 Vict. c. 47), or to be im-"prisoned for any term not exceed-"ing two years, with or without "hard labour, and with or without "solitary confinement." (Former provisions, 7 & 8 Geo. 4, c. 29, s. 12, and Anne, st. 1, c. 7, respectively repealed.)

If a prisoner, who was in the service of the prosecutor, stole a quantity of lace in several pieces, the pieces together being above 5*l*. in value, and brought them all out of his master's house at the same time, this was a capital offence, although it was shewn that the prisoner had the opportunity of stealing the lace by a piece at a time, and that no one of the pieces was worth 5*l*. Rex v. Jones, 4 C. & P. 217—Bolland.

A servant indicted for stealing bank-notes, the property of her master, in his dwelling-house, set up, as her defence, that she found them in in the passage, and not knowing to whom they belonged, kept them to see if they were advertised:—Held, she ought to have inquired of her master whether they were his or not; and that not having done so, but having taken them away from the house, she was guilty of stealing them. Reg. v. Kerr, 8 C. & P. 176—Park.

Stealing in a bed-room over a stable in a yard, not under the same roof, nor having any direct communication with the house in which the prosecutor resides, cannot be properly charged as a stealing in his dwelling-house. Rex v. Turner, 6 C. & P. 407—Vaughan.

If one, on going to bed, puts his

clothes and money by the bed-side, they are under the protection of the dwelling-house, and not of the person; and, therefore, a party stealing them may be convicted of stealing in a dwelling-house. Rex v. Thomas, Car. C. L. 295.

A man went to bed with a prostitute, having put his watch in his hat on the table; the woman stole the watch whilst he was asleep:—Held, that the offence was that of stealing in a dwelling-house, and not a stealing from the person. Reg. v. Hamilton, 8 C. & P. 49—Parke and Patteson.

Under 12 Anne, st. 1, c. 7, the larceny must have been of things under the protection of the house, and not of any person within it, therefore not of money in the pocket. Rex v. Owen, 2 East, P. C. 645; 2 Leach, C. C. 572.

Property left by mistake at a house, and delivered to the occupier, under the supposition that it was for one of the persons in the house, is entitled to the protection of the house. Rex v. Carroll, 1 M. C. C. 89.

The goods of a lodger's guest are under the protection of the dwelling-house; therefore a lodger who invites a man to his room, and then steals his goods to the value of 40s. (now 5l.) when not about his person, is liable to be found guilty of stealing in a dwelling-house. Rex v. Taylor, R. & R. C. C. 418.

Stealing in a dwelling-house to the value of 5l. or more by the owner of the house was within 7 & 8 Geo. 4, c. 29, s. 12. Reg. v. Bowden, 2 M. C. C. 285; 1 C. & K. 147.

A servant let a person into his master's house on a Saturday afternoon, and concealed him there all night, in order that he might rob the house, and on Sunday morning left the premises. In pursuance of the previous arrangement, the man, in the servant's absence, broke into the bed-room of the master, and stole the contents of his cash-box;

Held, that the man who took the property from the cash-box was rightly charged as a thief. Reg. v. Tuckwell, Car. & M. 215—Coleridge.

A member of a club was indicted for stealing some of the plate used at the club-house. The house-steward slept in the house, and stated, that he had the charge of all the plate, and was responsible for it: but the plate was delivered every night to the under-butler, who was appointed by the club, and by him placed in a chest in the pantry. The indictment described the goods as the property of the house-steward, and alleged it to have been stolen in his dwelling-house:-Held, that, upon the evidence, it was wrong in both respects, inasmuch as his sleeping in the house was only as a servant of the club, and his alleged responsibility was not coupled with any custody of the property, either by himself or his own servants. Reg. v. Ashley, 1 C. & K. 198 —Law and Bullock.

Indictment. — A. and B. were found guilty on an indictment containing two counts—one for stealing in a dwelling-house above the value of 5l., and the other for simple larceny, and the judgment was, that they should be transported for ten years for the felony aforesaid:— Held, that the judgment was bad: as either the indictment alleged one felony in two counts, in which case the judgment was bad for uncertainty, the court not having the power to apply it to the particular count in the indictment which would support it; or it alleged a separate felony on each count, in which case, the jury having found but one offence, the judgment is bad, because the word felony cannot be treated as nomen Campbell v. Reg. (in collectionis. error), 2 New Sess. Cas. 297; 11 Q. B. 799; 10 Jur. 329; 15 L. J., M. C.

stole the contents of his east box; Wicros an indictment for attempting Fish. Dig.—20.

to steal goods in a dwelling-house, it is not necessary to specify any particular article or articles. general allegation of an attempt to steal "goods and chattels" is sufficient. Reg. v. Johnson, 10 Jur., N. S. 1160; 34 L. J., M. C. 24; 13 W. R. 101; L. & C. 489.

With Menaces. ] — By 24 & 25 Vict. c. 96, s. 61, "whosoever shall "steal any chattel, money or valu-"able security in any dwelling-"house, and shall by any menace or "threat put any one being therein "in bodily fear, shall be guilty of "felony, and, being convicted there-"of, shall be liable, at the discretion "of the court, to be kept in penal "servitude for any term not exceed-"ing fourteen years, and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment." (Former provision, 7 Will. 4 & 1 Vict. c. 86, s. 5.)

An indictment for stealing in the dwelling-house, persons being therein and put in fear, must state that the persons were put in fear by the prisoners. Rex v. Etherington, 2 Leach, C. C. 671; 2 East, P. C. 635.

In order to constitute the offence of stealing in a dwelling-house, and by menaces and threats putting persons being therein in bodily fear, it is not necessary that all the persons engaged in the crime should be actually in the house; and if one remains outside, he may be equally guilty of using menaces and threats, if there was a common purpose to inspire terror. Reg. v. Murphy, 6 Cox, C. C. 340—Williams.

A threat to a person outside the house is not within the words of the statute, but it is a circumstance from which the jury may infer the line of conduct inside the house.

The act of placing persons with their faces against a wall, and desiring them not to look round, with- | whilst the other went to a cupboard

out the use of any actual violence, is evidence of an intention to obtain, money by threats, and the bodily fear may be inferred, although the persons so treated may deny that such acts created alarm or fear.

#### 5. From the Person.

If a person with menaces demanded a sum of money of another, and that the other did not give it to him because he had it not with him, this was a felony within 7 & 8 Geo. 4, c. 29, s. 6; but if the person demanding the money knew that the money was not then in the possession of the party, and only intended to obtain an order for the payment of it, it was otherwise. Rex v. Edwards, 6 C. & P. 515—Patteson.

To constitute a stealing from the person, the thing must be completely removed from the person; removal from the place where it was, if it remains throughout with the person, is not sufficient. Rex v. Thompson, 1 M. C. C. 78.

But such removal would be sufficient to constitute a simple lar-Ib.

A watch was carried in a waistcoat pocket, with a chain attached passing through a button-hole of the waistcoat, being there secured by a watch-key. The prisoner took the watch out of the pocket and by force drew the chain out of the button-hole, but the watch-key having been caught by a button of the waistcoat, the watch and chain remained suspended:—Held, a sufficient severance to maintain a conviction for stealing from the person. Reg. v. Simpson, Dears. C. C. 421; 3 C. L. R. 80; 18 Jur. 1030; 24 L. J., M. C. 7; 6 Cox, C. C. 422.

On a trial for robbery and stealing from the person, it was proved that the prosecutor, who was paralysed, received, whilst sitting on a sofa in his room, a violent blow on the head from one of the prisoners, in the same room and stole therefrom a cash-box:—Held, that it was a question for the jury whether the cash-box was at the time under the protection of the prosecutor. If so, the charge of stealing from the person would be sustained. Reg. v. Selway, 8 Cox, C. C. 235 —Chambers, C. S.

## 6. By Tenants or Lodgers.

By 24 & 25 Vict. c. 96, s. 74, "whosoever shall steal any chat-"tel or fixture let to be used by "him or her in or with any house " or lodging, whether the contract "shall have been entered into by "him or her or by her husband, or by "any person on behalf of him or "her or her husband, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "be imprisoned for any term not " exceeding two years, with or with-"out hard labour, and with or with-"out solitary confinement, and, if "a male under the age of sixteen " years, with or without whipping; " and in case the value of such chat-"tel or fixture shall exceed the sum " of five pounds, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding seven years, "and not less than five years (27 " & 28 Vict. c. 47), or to be im-"prisoned for any term not exceed-"ing two years, with or without "hard labour, and with or without "solitary confinement, and, if a "male under the age of sixteen " years, with or without whipping; "And in every case of stealing

"any chattel in this section men-"tioned it shall be lawful to prefer "an indictment in the common "form as for larceny, and in every "case of stealing any fixture in "this section mentioned to prefer "an indictment in the same form "as if the offender were not a ten-"ant or lodger, and in either case

"or person letting to hire." (Former provision, 7 & 8 Geo. 4, c. 29, s. 45. By 7 & 8 Geo. 4, c. 27, 3 Will. & M. c. 9, was repealed.)

The prisoners were tenants and occupiers of a house in which were certain gas-fittings belong to a public company. It became necessary that a gas-meter should be changed, and the old one was taken down and left in the custody of the prisoners till called for by the company's servant. In the meantime they converted it to their use:—Held, that they could not be convicted of larceny. Reg. v. Mattheson, 5 Cox, C. C. 276—Gurney.

The case of Rex v. Palmer, 2 Leach, C. C. 680; 2 East, P. C. 586, decided that a tenant stealing goods from a ready-furnished house was not guilty of felony, within 3

Will. & M. c. 9, s. 5.

### 7. In Manufactories.

By 24 & 25 Vict. c. 96, s. 62, "whosoever shall steal, to the val-"ue of 10s., any woollen, linen, "hempen or cotton yarn, or any "goods or article of silk, woollen, "linen, cotton, alpaca or mohair, "or of any one or more of those "materials mixed with each other, " or mixed with any other material, " whilst laid, placed or exposed, dur-"ing any stage, process or progress "of manufacture, in any building, " field or other place, shall be guilty "of felony, and being convicted "shall be liable, at the discretion " of the court, to be kept in penal " servitude for any term not exceed-"ing fourteen years, and not less than "five years (27 & 28 Vict. c. 47), or "be imprisoned for any term not "exceeding two years, with or with-" out hard labour, and with or with-"out solitary confinement." (Former provision, 7 & 8 Geo. 4, c. 29, s. 16.)

Where, on an indictment on 18 Geo. 2, c. 27, for stealing yarn out of a bleaching-ground, it appeared "to lay the property in the owner that the yarn had been spread on Digitized by Microsoft®

the ground, but at the time of the theft was in heaps, in order to be carried into the house:—Held, that as there was no occasion to leave it in that state, it was not within the statute, which uses the words, "laid, placed or exposed, during any stage, process or progress of manufacture, in any building, field or other place." Rex v. Hugill, 2 Russ. C. & M. 245.

On an indictment on 18 Geo. 2, c. 27, for stealing calico placed to be printed, &c., in a building made use of by a calico printer, for printing, drying, &c.:—Held, that in order to support the capital charge, it was necessary to have proved that the building, from which the calico was stolen, was made use of either for printing or drying calico. Rex v. Dixon, R. & R. C. C. 53; 1

East, P. C. 512.

By 17 Geo. 3, c. 56, s. 10, it shall be lawful for any two justices, upon complaint made to them upon oath that there is cause to suspect that purloined or embezzled materials, used in certain manufactures, are concealed in any dwellinghouse, outhouse, yard, garden or other place or places, to issue a search warrant for the search, in the daytime, of every such dwellinghouse, &c.; and if any such materials, suspected to be purloined or embezzled, are found therein, to cause the same, and the person in whose house, outhouse, yard, garden or other place they are found, to be brought before two justices; and if the person shall not give an account to their satisfaction of how he came by the same, he shall be adjudged guilty of a misdemeanor: -Held, that a warehouse occupied for business purposes only, and not within the curtilage of or connected with any dwelling-house, was a place within the section. Reg. v. Edmundson, 2 El. & El. 77; 5 Jur., N. S. 1351; 28 L. J., M. C. 213; 8 Cox, C. C. 212.

8. From Mines.

By 24 & 25 Vict. c. 96, s. 38, "whosoever shall steal, or sever "with intent to steal, the ore of "any metal, or any lapis calamina-"ris, manganese or mundick, or "any wad, black cawke or black "lead, or any coal or cannel coal, "from any mine, bed, or vein there-" of respectively, shall be guilty of " felony, and, being convicted there-" of, shall be liable, at the discretion "of the court, to be imprisoned for "any term not exceeding two years, "with or without hard labour, and "with or without solitary confine-ment." (Previous enactment, 7 & 8 Geo. 4, c. 29, s. 37.)

By s. 39, "whosoever, being em"ployed in cr about any mine, shall
"take, remove or conceal any ore
"of any metal, or any lapis calami"naris, manganese, mundick or oth"er mineral found or being in such
"mine, with intent to defraud any
"proprietor of or any adventurer in
"such mine, or any workman or
"miner employed therein, shall be
"guilty of felony." (2 & 3 Vict. c.
58, s. 10, Previous enactment. Pun-

ishment as in last section.)

It is not larceny for miners employed to bring ore to the surface, and paid by the owners according to the quantity produced, to remove from the heaps of other miners ore produced by them, and add it to their own, in order to increase their wages, the ore still remaining in the possession of the owners. Rea v. Webb, 1 M. C. C. 431.

An indictment alleging, that A. B., C. D., and persons employed in a mine, in the parish of &c., in the county of Cornwall, did steal ore, the property of the adventurers in the said mine, then and there being found, does not sufficiently shew the ore to have been in the mine when stolen. Reg. v. Trevenner, 2 M. & Rob. 476—Cresswell.

Where a prisoner was indicted in one count for stealing from the

mine of H. J. G. coal, the property | (See 2 & 3 Vict. c. 47, s. 30, for of H. J. G., and in the same count for stealing from the mines of thirty other proprietors coal, the property of each of such other proprietors, and it appeared that all the coal so alleged to have been stolen, had been raised at one shaft:—Held, first, that the prosecutor could not be called upon to elect on which charge he would go to the jury. Reg. v. Bleasdale, 2 C. & K. 765 --Erle.

Held, secondly, that although, for the sake of convenience, in trying the prisoner the judge might direct the jury to confine their attention to one particular charge, yet that the prosecutor was entitled to give evidence in support of all the charges in the indictment.

Held, thirdly, that proof of such charges might be relied on, in order to shew a felonious intent.

9. In Ships in Ports or on Navigable Rivers and Wharves.

In Ports or Canals. ]—By 24 & 25 Vict. c. 96, s. 63, "whosoever "shall steal any goods or merchan-"dise in any vessel, barge, or boat " of any description whatsoever in "any haven, or in any port of entry " or discharge, or upon any naviga-"ble river, or canal, or in any creek "or basin belonging to or com-"municating with any such haven, " port, river or canal, or shall steal "any goods or merchandise from "any dock, wharf, or quay adja-"cent to any such haven, port, riv-"er, canal, creek, or basin, shall be "guilty of felony, and being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding fourteen years, "and not less than five years (27 " & 28 Vict. c. 47), or to be im-" prisoned for any term not exceed-"ing two years, with or without "hard labour, and with or without "solitary confinement." (Former provision, 7 & 8 Geo. 4 c. 29, s. 17.) bringing the things stolen into this

stealing from wharfs within the metropolis.)

The luggage of a passenger going a steamboat, was within the words "goods or merchandise" in 7 & 8 Geo. 4, c. 29, s. 17. Rex v. Wright, 7 C. & P. 159-Park and Alderson.

An indictment for stealing goods on a navigable river was not satisfied by evidence of a stealing on one of its creeks. Rex v. Pike, 1 Leach, C. C. 317; 2 East, P. C. 647.

From Ships in Distress. By s. .64, "whosoever shall plunder or " steal any part of any ship or ves-"sel which shall be in distress, or "wrecked, stranded or cast on "shore, or any goods, merchandise, " or articles of any kind belonging "to such ship or vessel, shall be "guilty of felony;

"And the offender may be in-"dicted and tried either in the coun-"ty or place in which the offence shall "have been committed, or in any "county or place next adjoining." (Former provision, 7 Will. 4 & 1 Vict. c. 87, s. 8. Punishment as in

preceding section.)

## 10. Abroad or on the High Seas.

If a person is apprehended in a borough for a larceny committed on the high seas, he may be tried for that larceny before the court of quarter sessions of the borough. Reg. v. Peel, L. & C. 231; 9 Cox, C. C. 220; 32 L. J., M. C. 65; 8 Jur., N. S. 1185; 11 W. R. 40; 7 L. T., N. S. 336.

Piratically stealing a ship's anchor and cable was a capital offence by the marine laws, and triable under 28 Hen. 8, c. 15; 39 Geo. 3, c. 37, not extending to this case. Rex v. Curling, R. & R. C. C. 123.

If a larceny is committed out of the kingdom, though within the king's dominions (e. g. in Jersey),

kingdom will not make it larceny here. Rex v. Prowes, 1 M. C. C. 349; S. P., Reg. v. Madge, 9 C. & P. 29.

## 11. Stealing or destroying Written Instruments,

Valuable Securities. ]—By 24 & 25 Vict. c. 96, s. 27, "whosoever " shall steal, or shall for any fraud-"ulent purpose destroy, cancel, or "obliterate the whole or any part "of any valuable security, other "than a document of title to lands, "shall be guilty of felony, of the "same nature and in the same de-" gree, and punishable in the same "manner as if he had stolen any "chattel of like value with the " share, interest, or deposit to which "the security so stolen may relate, " or with the money due on the se-" curity so stolen, or secured there-"by and remaining unsatisfied, or "with the value of the goods or " other valuable thing represented, "mentioned or referred to in or by " the security." (Former provision, 7 & 8 Geo. 4, c. 29, s. 5.)

An indictment under this section for stealing a valuable security, must particularise the kind of valuable security stolen; and any material variance between the description in the indictment and the evidence, if not amended, will be fatal. Reg. v. Lowrie, 1 L. R., C. C. 61; 36 L. J., M. C. 24; 15 W. R. 360; 15 L. T., N. S. 632.

Deeds relating to Real Property.]

—By 24 & 25 Vict. c. 96, s. 28,

"whosoever shall steal, or shall for

"any fraudulent purpose destroy,

"cancel, obliterate, or conceal the

"whole or any part of any docu
"ment of title to lands shall be

"guilty of felony, and being con
"victed thereof shall be liable, at

"the discretion of the court, to be

"kept in penal servitude for the

"term of five years (27 & 28 Vict.

"c. 47), or to be imprisoned for

"any term not exceeding two years,

"with or without hard labour, and "with or without solitary confine-"ment;

Form of Indictment.]—"And in any indictment for any such of fence relating to any document of title to lands, it shall be sufficient to allege such document to be or to contain evidence of the title or of part of the title of the person or of some one of the person of t

By s. 1, "the term 'document" of title to lands' shall include "any deed, map, paper, or parch-"ment, written or printed, or part-"ly written or partly printed, be-"ing or containing evidence of the "title, or any part of the title, to "any real estate, or to any interest in or out of any real estate."

Wills or Codicils. ] — By s. 29, " whosoever shall, either during the "life of the testator or after his "death, steal, or for any fraudulent " purpose destroy, cancel, obliterate, " or conceal, the whole or any part " of any will, codicil, or other testa-"mentary instrument, whether the "the same shall relate to real or per-"sonal estate, or to both, shall be "guilty of felony, and being con-"victed thereof, shall be liable, "at the discretion of the court, to " be kept in penal servitude for life, " or for any term not less than five " years, or to be imprisoned for any "term not exceeding two years, " with or without hard labour, and "with or without solitary confine-"ment;

"And it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument is the
property of any person." (Former

provision, 7 & 8 Geo. 4, c. 29, s. 23.) If a defendant concealed a will, and the money which ought, by the will, to have gone to A. & B., and with that money paid the debts of the husband of the next of kin, to whom he was a creditor, this was a fraudulent purpose, within 7 & 8 Geo. 4, c. 29, s. 23. Reg. v. Morris, 9 C. & P. 89—Alderson.

On an indictment on 7 & 8 Geo. 4, c. 29, s. 23, for stealing writings relating to real estate, the jury must be satisfied that the defendant took them under such circumstances as would have amounted to larceny, if the writings had been the subject of larceny. Rex v. John,

7 C. & P. 324—Patteson.

Records or Legal Documents.]-By s. 30, "whosoever shall steal, "or shall for any fraudulent pur-" pose take from its place of depos-"it for the time being, or from any " person having the lawful custody "thereof, or shall unlawfully and " maliciously cancel, obliterate, in-"jure, or destroy the whole or any part of any record, writ, return, "panel, process, interrogatory, de-"position, affidavit, rule, order or "warrant of attorney, or of any "original document whatsoever of " or belonging to any court of rec-"ord, or relating to any matter, "civil or criminal, begun, depend-"ing, or terminated in any such "court, or of any bill, petition, an-"swer, interrogatory, deposition, "affidavit, order, or decree, or of "any original document whatsoev-"er of or belonging to any court of " equity, or relating to any cause or "matter begun, depending, or ter-"minated in any such court, or of "any original document in any-"wise relating to the business of "any office or employment under "her Majesty, and being or remain-"ing in any office appertaining to "any court of justice, or in any of "her Majesty's castles, palaces, or "houses, or in any government or | " or shall cut, break, root up, or

"public office, shall be guilty of "felony, and being convicted there-" of shall be liable, at the discretion " of the court, to be kept in penal servitude for five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour, and with or without solita-"ry confinement; and it shall not " in any indictment for such offence "be necessary to allege that the " article in respect of which the of-"fence is committed is the property "of any person." (Former provision, 7 & 8 Geo. 4, c. 29, s. 21.)

Before 7 & 8 Geo. 4, c. 29, stealing rolls of parchment was a larceny, although such rolls were the record of a court of justice, unless they concerned the realty. Rex v. Walker, 1 M. C. C. 155; but it was not so if they concerned the realty. Rex v. Westbeer, 2 Str. 1133.

A commission to settle the boundaries of a manor is an instrument concerning the realty, and not the subject of larceny at common law. Rex v. Westbeer, 1 Leach, C. C. 13.

Parish Registers. — Indictment under 11 Geo. 4 & 1 Will. 4, c. 66, s. 20, for destroying, defacing and injuring a register of baptisms, marriages and burials. Objections: 1. That there was neither a destroying, defacing nor injuring, because the register, when produced, had the torn piece pasted in, and was as legible as before. 2. That the indictment was bad for uncertainty, for alleging three distinct and different offences. 3. For not containing an express averment of a scienter:—Held, indictment good on all points. Reg. v. Bowen, 1 Den. C. C. 22; 1 C. & K. 501.

12. Stealing or destroying Trees, Shrubs, Vegetables and Fences.

In Parks, Pleasure Grounds, or Orchards.]—By 24 & 25 Viet. c. 96, s. 32, "whosoever shall steal,

"otherwise destroy or damage with "intent to steal, the whole or any " part of any tree, sapling, or shrub, "or any underwood, respectively "growing in any park, pleasure ground, garden, orchard, or ave-"nue, or in any ground adjoining "or belonging to any dwelling-"house, shall (in case the value of "the article or articles stolen, or "the amount of the injury done, "shall exceed the sum of 1l.) be "guilty of felony, and being con-"victed thereof shall be liable to " be punished as in the case of sim-"ple larceny;

"And whosoever shall steal, or " shall cut, break, root up, or oth-"erwise destroy or damage, with "intent to steal, the whole or any " part of any tree, sapling, or shrub, "or any underwood, respectively "growing elsewhere than in any of "the situations in this section be-"fore mentioned, shall (in case the " value of the article or articles stol-"en, or the amount of the injury " done, shall exceed the sum of 5l.) " be guilty of felony, and being con-" victed thereof shall be liable to be "punished as in the case of simple "larceny." (Similar to former provision, 7 & 8 Geo. 4, c. 29, s. 38.)

In 7 & 8 Geo. 4, c. 29, s. 38, the words "adjoining any dwellinghouse" imported actual contact, and therefore ground separated from a house by a narrow walk and paling with a gate in it, was not within their meaning. Rex v. Hodges, M. & M, 341—Park and Parke.

Whether ground is properly described as a garden within that section, is a question for the jury.

The 24 & 25 Vict. c. 96, s. 32, enacts, that whosever shall steal or cut, destroy or damage with intent to steal the whole or any part of any tree, &., shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of 5l.) be guilty of felony. In

of the injury done to two or more trees may be added together, provided the trees are damaged at one and the same time, or so nearly at the same time, as to form one continuous transaction. Reg. v. Shepherd, 1 L. R., C. C. 118; 37 L. J., M. C. 45; 16 W. R. 373; 17 L. T., N. S. 482; 11 Cox, C. C. 119.

Elsewhere. ]—By s. 33, "whosoev-"er shall steal, or shall cut, break, "root up, or otherwise destroy or "damage with intent to steal, the " whole or any part of any tree, sap-" ling, or shrub, or any underwood, "wheresoever the same may be re-"spectively growing, the stealing " of such article or articles, or the "injury done, being to the amount " of Is. at the least, shall, on convic-"tion thereof before a justice of the "peace, forfeit and pay, over and "above the value of the article or "articles stolen, or the amount of "the injury done, such sum of mon-"ey not exceeding 5l. as to the jus-"tice shall seem meet." (Similar to 7 & 8 Geo. 4, c. 29, s. 39.)

A conviction under the 7 & 8 Geo. 4, c. 29, s. 39, for stealing an ash tree, the property of M., ordered the offender "to forfeit and pay, over and above the value of the tree stolen, 5s., and for the value of the tree 1s.; and also to pay 1l. 4s. 6d. for costs, to be paid on or before March 19th, and, in default of payment of the sums, to be imprisoned for one month, unless the sums should be sooner paid." It was then ordered, that the 5s. should be paid to the overseer, and the 1s. to the person aggrieved, and the 1l. 4s. 6d. should be immediately paid to R., the complainant. The information had been laid by R. before one magistrate, who had granted a summons, and the case heard, and the conviction made by another. an action for false imprisonment being brought against the convictestimating the injury, the amount | ing magistrate: Held, that the

conviction was not invalidated, first, by reason of its not having taken place upon the information of the person aggrieved. Secondly, nor from its having taken place before a magistrate, who did not receive the original information. Thirdly, nor by the mode of adjudicating as to the costs. Tarry v. Newman, 2 New. Sess. Cas. 449; 15 M. & W. 645; 15 L. J., M. C. 160.

Fences. —By s. 34, "whosoever " shall steal, or shall cut, break, or "throw down with intent to steal, "any part of any live or dead fence, " or any wooden post, pale, wire, or "rail set up or used as a fence, or "any stile or gate, or any part "thereof respectively, shall, on con-"viction thereof before a justice of "the peace, forfeit and pay, over "and above the value of the arti-"cle or articles so stolen, or the -"amount of the injury done, such "sum of money not exceeding 5l. "as to the justice shall seem meet." (Former enactment, 7 & 8 Geo. 4, c. 29, s. 40.)

Suspicious Possession. ]-By s. 35, "if the whole or any part of any "tree, sapling, or shrub, or any un-"derwood, or any part of any live "or dead fence, or any post, pale, "wire, rail, stile, or gate, or any "part thereof, being of the value " of 1s. at the least, shall be found "in the possession of any person, or "on the premises of any person, "with his knowledge, and such per-"son, being taken or summoned be-"fore a justice of the peace, shall "not satisfy the justice that he "came lawfully by the same, he "shall on conviction by the justice "forfeit and pay, over and above "the value of the article or articles "so found, any sum not exceeding "2l." (Former provision, 7 & 8 Geo. 4, c. 29, s. 41.)

Vegetables.]—By s. 36, "whoso-|" exceedin Digitized by Microsoft®

"ever shall steal, or shall destroy "or damage with intent to steal, "any plant, root, fruit, or vegeta-"ble production growing in any " garden, orchard, pleasure ground, "nursery ground, hothouse, green-"house, or conservatory, shall, on "conviction thereof before a jus-"tice of the peace, at the discretion " of the justice, either be commit-" ted to the common gaol or house of "correction, there to be imprisoned "only, or to be imprisoned and "kept to hard labour, for any term "not exceeding six months, or else "shall forfeit and pay, over and " above the value of the article or "articles so stolen, or the amount " of the injury done, such sum of "money not exceeding 20l. as to "the justice shall seem meet." (Former enactment, 7 & 8 Geo. 4, c. 29, s. 42.)

The words "plant" and "vegetable production," in that statute, did not apply to young fruit trees. Rex v. Hodges, M. & M. 341—Park and Parke.

Vegetables not growing in Gardens.]—By s. 37, "whosoever shall "steal, or shall destroy or damage " with intent to steal, any cultivat-" ed root or plant used for the food of "man or beast, or for medicine, or " for distilling, or for dyeing, or for " or in the course of any manufacture, " and growing in any land, open or "inclosed, not being a garden, or-"chard, pleasure ground, or nurse-"ry ground, shall, on conviction "thereof before a justice of the " peace, at the discretion of the jus-"tice, either be committed to the "common gaol or house of correc-"tion, there to be imprisoned only, "or to be imprisoned and kept to " hard labour, for any term not ex-" ceeding one month, or else shall "forfeit and pay over and above "the value of the article or articles "so stolen, or the amount of the in-"jury done, such sum of money not "exceeding 20s. as to the justice

"shall seem meet, and in default of "payment thereof, together with "the costs (if ordered), shall be committed for any term not ex-" ceeding one month, unless pay-(Former " ment be sooner made." provision, 7 & 8 Geo. 4, c. 29, s. 43.) Clover was a plant used for the food of beasts within this enactment.

Reg. v. Brumby, 3 C. & K. 315— Williams.

#### 13. Attempts to commit Larceny.

If a person puts his hand into the pocket of another, with intent to steal what he can find there, and the pocket is empty, he cannot be convicted of an attempt to steal. Reg. v. Collins, L. & C. 471; 9 Cox, C. C. 497; 10 Jur., N. S. 686; 33 L. J., M. C. 177; 12 W. R. 886; 10 L. T., N. S. 581.

C. was in the employ of a contractor for the supply of meat to a camp, and the course of business was for the meat to be sent down to the camp, there weighed out to the different messes, and the surplus, if any, returned to the contractor. C., whilst employed upon this duty by the contractor, during the weighing out, substituted a false weight for the true one, his intention being to carry away and steal the difference between the just surplus, for which he would have to account to his master, and the apparent surplus actually remaining after the first weighing. Nothing remained upon his part to complete his scheme except to carry away and dispose of the meat, which he would have done had the fraud not been detected:—Held, properly convicted of attempting to steal the meat. Reg. v. Cheeseman, 9 Cox, C. C. 100; L. & C. 140; 8 Jur., N. S. 143; 31 L. J., M. C. 89; 10 W. R. 255; 5 L. T., N. S. 717.

An indictment for an attempt to commit larceny which charges the prisoner with attempting to steal "the goods and chattels of A.," without further specifying the goods | "ed or exchanged, and anything

intended to be stolen, is sufficiently certain. Reg. v. Johnson, L. & C. 489; 10 Cox, C. C. 13; 34 L. J., M. C. 24.

#### 14. Subject-matter of Larceny.

Documents of Title to Goods.]-By 24 & 25 Vict. c. 96, "relating "to larceny and other similar of-"fences, s. 1, in the interpretation " of this act, the term ' document of "title to goods' shall include any "bill of lading, India warrant, "dock warrant, warehouse keep-"er's certificate, warrant or order " for the delivery or transfer of any "goods or valuable thing, bought "and sold note, or any other docu-"ment used in the ordinary course "of business as proof of the posses-" sion or control of goods, or author-"ising or purporting to authorise, "either by indorsement or by deliv-"ery, the possessor of such docu-"ment to transfer or receive any "goods thereby represented or. "therein mentioned or referred to.

Document of Title to Lands.]— "The term 'document of title to "lands' shall include any deed, "map, paper, or parchment, writ-"ten or printed, or partly written "and partly printed, being or con-"taining evidence of the title, or "any part of the title, to any real "estate, or to any interest in or "out of any real estate."

Property. — This term shall in-" clude every description of real and "personal property, money, debts, " and legacies, and all deeds and in-"struments relating to or evidenc-"ing the title or right to any prop-"erty, or giving a right to recover "or receive any money or goods, "and shall also include, not only "such property as shall have been " originally in the possession or un-"der the control of any party, but "also any property into for which "the same may have been convert"acquired by such conversion or "exchange, whether immediately "or otherwise."

Mortgage deeds, being substituted securities for the payment of money, are choses of action, and not goods and chattels. Where, therefore, a prisoner was indicted for a burglary, in breaking into a house at night, with intent to steal the goods and chattels therein, and the jury found that he broke into the house with intent to steal mortgage deeds only, the conviction was quashed. Reg. v. Powell, 2 Den. C. C. 403; 5 Cox, C. C. 396; 16 Jur. 177; 21 L. J., M. C. 78.

Valuable Securities. —" The term "' valuable security 'shall include "any order, exchequer acquittance, " or other security whatsoever, en-"titling or evidencing the title of "any person or body corporate to "any share or interest in any pub-"lic stock or fund, whether of the "United Kingdom, or of Great "Britain or of Ireland, or of any "foreign state, or in any fund of "any body corporate, company, or " society, whether within the United "Kingdom or in any foreign state or "country, or to any deposit in any "bank, and shall also include any "debenture, deed, bond, bill, note, "warrant, order, or other security "whatsoever for money or for pay-"ment of money, whether of the "United Kingdom, or of Great "Britain, or of Ireland, or of any "foreign state, and any document "of title to lands or goods as here-"inbefore defined." (Former provision, 7 & 8 Geo. 4, c. 29, s. 5.)

A mortgage deed, and title deeds accompanying it, constituted a security for money within the latter statute. Reg. v. Williams, 6 Cox, C. C. 49—Platt.

An indictment charging in one count the larceny of "three deeds being a security for money, to wit, for 201., of and belonging to H.

W.": and in another count the larceny of "three deeds, being a security for the payment of money, to wit, for 20*l*., of and belonging to H. W.", is supported by proof of the larceny of deeds of lease and release from A. to B. of real estate, and of a mortgage by demise of the same property from B. to C., and held by the prosecutor as executor of C. *Ib*.

A prisoner was convicted on an indictment under 24 & 25 Vict. c. 96, s. 27, for stealing a valuable security, to wit, an agreement between L. and C., whereby C. was entitled to receive payment of certain sums of money, and which sums were then due and unsatisfied to C. The sums were not due till some time after the stealing :-Held, that since this section limits the terms valuable security to securities other than a document of title to lands, it is material in an indictment under this section to describe the valuable security, so as to shew that it is within the section that the description given ought to have been proved, and that, since it had not been proved, the conviction could not be supported. Reg. v. Lowrie, 36 L. J., M. C. 24; 1 L. R., C. C. 61.

An agreement, although unstamped, is a chose in action, and therefore not the subject of larceny. Reg. v. Watts, Dears. C. C. 326; 2 C. L. R. 604; 18 Jur. 192; 23 L. J., M. C. 56; 6 Cox, C. C. 304. But by 17 & 18 Vict. c. 83, s.

But by 17 & 18 Vict. c. 83, s. 27, "every instrument liable to "stamp duty shall be admitted in "evidence in any criminal proceed-"ing, although it may not have the "stamp required by law impressed "thereon or affixed thereto."

Value.]—Though, to make a thing the subject of an indictment for a larceny, it must be of some value, and stated to be so in the indictment, yet it need not be of the value of some coin known to the law, that is to say, of a farthing at the least. Reg. v. Morris, 9 C. & P. 349-Parke.

Bills, Notes, Cheques and other Securities. ] — Stealing re-issuable notes after they have been paid, and before they have been re-issued, did not subject the party to an indictment on 2 Geo. 2, c. 25, for stealing notes; but he might be indicted for stealing paper with valuable stamps upon it. Rex v. Clark, R. & R. C. C. 181; 2 Leach, C. C.

To obtain from a person his note of hand by threatening with a knife held to his throat to take away his life, was not a felonious stealing of the note within 2 Geo. 2, c. 25, s. 3, for it never was of value to, or in the peaceable possession of, such per-Rex v. Phipoe, 2 Leach, C. C. 673; 2 East, P. C. 599.

Country bankers' notes, which had been paid by the bankers in London, at whose house they were made payable, and by them sent down to the country bankers to be re-issued, on the way there were stolen, and the prisoner was indicted for receiving them. The indictment in some counts charged the notes to be valuable securities, and in others, as pieces of paper of the goods and chattels of the country bankers. The prisoner was convicted, and the conviction held right. Some of the judges doubted whether these notes were to be considered as valuable securities, but, if not, they all thought they were goods and chattels. Rex v. Vyse, 1 M. C. C. 218.

Exchequer bills, although signed by a person not authorized to do so, were securities and effects within 15 Geo. 2, c. 13, s. 12. Rex v. Aslett, 1 N. R. 1; 2 Leach, C. C. 958; R. & R. C. C. 67.

The halves of country bank-notes, sent in a letter, are goods and chattels, and a person who steals them is indictable for larceny. Rex v. Mead, 4 C. & P. 535—Bosanquet. | been paid in at one branch of the

A., in consequence of seeing an advertisement applied to B. to raise money for him, B. said he would procure him 5,000l., and produced from his pocket-book ten blank 6s. bill stamps, across each of which A. wrote, "Accepted, payable at Messrs. P. & Co., 189, F. Street, London," and signed his name. B., who was present, took up the stamps, and nothing was said as to what was to be done with them. Afterwards bills of exchange for 500l. each were drawn on these stamps, and B. put them into circulation:— Held, that these stamps, with the acceptances thus written upon them, were neither bills of exchange, orders for the payment of money, nor securities for money. Rex v. Hart, 6 C. & P. 106—Littledale, Bolland and Bosanquet.

Held, also, that a charge of larceny against B. for stealing the stamps, and for stealing the paper on which the stamps were, would. not be sustained, as this was no larceny. Ib.

A. charged in one count with stealing a cheque for 13l. 9s. 7d., and in another count with stealing a piece of paper value 1d:-Held, that, supposing the cheque to have been a void cheque (as being contrary to 55 Geo. 3, c. 184), it would still sustain the charge laid in the second count. Reg. v. Perry, 1 Den. C. C. 69; 1 C. & K. 725.

A person might be convicted, under 7 & 8 Geo. 4, c. 29, s. 5, if he stole scrip certificates of a foreign railway company, as the statute extended to valuable securities for the shares in the funds of a foreign as well as of a British company. Reg. v. Smith, Dears. C. C. 561; 7 Cox, C. C. 93; 1 Jur., N. S. 1212; 25 L. J., M. C. 31.

A. was indicted for stealing 95l. The evidence was, that in money. he stole certain notes of a country bank which were not then in circulation, for value, but which had same bank, and were in course of ] transmission to another branch, where they had been originally issued, in order that they might be there re-issued or otherwise disposed of:-Held, that A. was guilty of larceny; and that, since 14 & 15 Vict. c. 106, s. 18, the offence was correctly described in the indict-Reg. v. West, 7 Cox, C. C. 183; Dears. & B. C. C. 109.

A servant a day or two before her mistress's death got cashed a cheque drawn to her mistress's order, and which had come to her mistress's house in a letter, and when cashed purported to bear her mistress's indorsement; and after cashing it she applied the greater part of it to a purpose which probably was directed by her mistress, but had retained a small surplus, and when taxed with it, just after her mistress's death, she denied the receipt of the cheque, the indorsement on which was believed not to be that of her mistress. The jury was directed that there was no evidence on which they could properly convict her for stealing the cheque, even if there was any on which they could have convicted for embezzling the surplus. Reg. v. Slingsby, 4 F. & F. 61--Pollock.

Stealing a pawnbroker's duplicate is larceny. Reg. v. Morrison, Bell, C. C. 158; 28 L. J., M. C. 210; 7 W. R. 554; 33 L. T. 220;

8 Cox, C. C. 194.

Gas. —The prisoner had contracted with a gas company for a supply of gas. The quantity consumed was to be measured by a meter rented by the prisoner of the company, and was to be paid for according to such measurement. The gas was conveyed from the company's main through an entrance pipe (the property of the prisoner) to the meter, and from thence, by another pipe, called the exit pipe, to the burners. The prisinto the entrance and exit pipes, diverted the gas from the meter, and thereby avoided paying for the full quantity of gas consumed:— Held, that this was larceny of the gas; that there was a sufficient severance of the gas, at the point of junction of the connecting pipe with the entrance pipe, to constitute an asportation; that the property and possession of the gas were in the company; and that it was immaterial whether the service pipe was the property of the prisoner or the com-Reg. v. White, 3 C & K. 363; Dears. C. C. 203; 6 Cox, C. C. 213; 17 Jur. 536; 22 L. J., M. C. 123.

#### 15. Letters and Government Documents.

If A. asks B., who is not his servant, to put a letter in the post, telling him it contains money, and B. breaks the seal, and abstracts the money before he puts the letter in the post, he is guilty of larceny. Rex v. Jones, 7 C. & P. 151.

But if a person, from idle curiosity, either personal or political, opens a letter addressed to another person, and keeps the letter, this is no larceny, even though a part of his object may be to prevent the letter from reaching its destination. Reg. v. Godfrey, 8 C. & P. 563—

Abinger.

A servant of B. applied for at the post-office and received all the letters addressed to B. She delivered them all to B., except one, which she burned. Her motive for destroying it was the hope of suppressing inquiries respecting her character:-Held, a larceny, and that, supposing lucri causâ to be a necessary ingredient therein (which the court did not admit), there was a sufficient lucrum proved.  $Reg.\ {
m v.}$ Jones, 1 Den. C. C. 188; 2 C & K.

Where a letter enclosing a cheque was directed to James Mucklow, oner, by inserting a connecting pipe | St. Martin's Lane, Birmingham, and

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no person of that name lived there, but the prisoner lived about ten yards from St. Martin's Lane, and another James Mucklow lived in New Hall Street; and the prisoner, in consequence of a message left by the postman, got the letter from the post-office, and appropriated the cheque to his own use:—Held, that it was not a felonious taking. Rex v. Mucklow, Car. C. L. 280; 1 M. C. C. 160.

A letter, containing a post-office order, directed to John Davies, was misdelivered to John Davis, one of the prisoners. Not being able to read, he took it to W. D., the other prisoner, who read it to him. He then said the letter and order were not for him, but was advised by W. D. to keep them and get the money. Both prisoners then went to the post-office, obtained the money, and appropriated it to their own use:---Held, that a conviction for larceny of the order could not be supported. Reg. v. Davis, 2 Jur., N. S. 478; 25 L. J., M. C. 91; Dears. C. C. 640.

A person who had surreptitiously taken a printed document from a government office, and sent it to a newspaper office to be published, being indicted for larceny:—Held, that the question for the jury was whether he had the object and intention of depriving the government permanently of the property in the paper. Reg. v. Guernsey, 1 F. & F. 394—Martin.

#### 16. Fixtures.

By 24 & 25 Vict. c. 96, s. 31, "whosoever shall steal, or shall rip, "cut, sever or break with intent to "steal, any glass or wood work be- "longing to any building whatso- "ever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metal or other material or of both, re- spectively fixed in or to any building whatsoever, or anything made of metal fixed in any land being

"private property, or for a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground, shall be guilty of felony, and, being convicted thereof, shall be liable to be punished as in the case of simple larceny; and in the case of any such thing fixed in any such square, street or place as aforesaid, it shall not be necessary to allege the same to be the property of any person." (Former provision, 7 & 8 Geo. 4, c. 29, s. 44.)

By 7 & 8 Geo. 4, c. 27, 4 Geo. 2, c. 32, and 21 Geo. 3, c. 68, were re-

pealed.

The prisoners were convicted upon an indictment which charged them with stealing lead fixed to a certain wharf. It was proved that the lead stolen formed the gutters of two brick, timber and tile built sheds erected upon the prosecutor's wharf:—Held, that the conviction was good, the lead being fixed to a building within 7 & 8 Geo. 4, c. 29, s. 44. Reg. v. Rice, Bell, C. C. 87; 5 Jur., N. S. 273; 28 L. J., M. C. 64; 7 W. R. 232; 32 L. T. 323; 8 Cox, C. C. 119.

The prisoners were convicted upon an indictment framed under 7 & 8 Geo. 4, c. 29, s. 44, of stealing metal fixed in land. It was proved that they had stolen a copper sundial fixed upon a wooden post in a churchyard:—Held, that the conviction was right. Reg. v. Jones, Dears. & B. C. C. 555; 4 Jur., N. S. 394; 27 L. J., M. C. 171.

A person, on a count (in the usual form) for stealing lead affixed to a building, cannot be convicted of larceny; and in order to warrant a conviction on such count, the jury must be satisfied that he unfixed the lead from the building, or was present aiding and assisting. Reg. v. Gooch, 8 C & P. 293—Tindal.

"spectively fixed in or to any building. An unfinished building, intended ing whatsoever, or anything made as a cart-shed, which is boarded up of metal fixed in any land being on all its sides, and has a door with a

lock to it, and the frame of a roof 2, c. 32. Rex v. Munday, 2 Leach, with loose gorse thrown upon it, because it is not yet thatched, is a building within 7 & 8 Geo. 4, c. 29, s. 44. Rex v. Worrall, 7 C. & P. 516 -I.ittledale.

Leaden images, on pedestals, fixed in the ground near a summerhouse, the summer-house being in an inclosed field (but not within the same inclosure as the house), were not within 4 Geo. 2, c. 32. Rex v. Richards, R. & R. C. C. 28.

A larceny may be committed of window sashes which are neither hung nor beaded into the frames, but merely fastened by laths nailed across the frames to prevent their shaking out; as they are not fixed to the freehold. Rex v. Hedges, 1 Leach, C. C. 201; 2 East, P. C. 590, n.

A church was a building within 4 Geo. 2, c. 32. Rex v. Hickman, 1 Leach, C. C. 318; 2 East, P. C. 593; S. P., Rex v. Parker, 2 East, P. C. 592; 1 Leach, C. C. 320, n.

Stealing iron rails from a tomb in a churchyard, not connected by any building to the church, was not within 4 Geo. 2, c. 32, and 21 Geo. 3, c. 68. Rex v. Davis, 2 East, P. C. 593; 1 Leach, C. C. 496, n.

Semble, that the stealing of brass fixed to tomb-stones in a churchyard was a felony under 7 & 8 Geo. 4, c. 29, s. 44. Rex v. Blick, 4 C.

& P. 377—Bosanquet.

But a copper sun-dial, fixed on the top of a wooden post standing in a churchyard, was metal fixed in land in a place dedicated to public use, and the subject of larceny within 7 & 8 Geo. 4, c. 29, s. 44. v. Jones, 7 Cox, C. C. 498—C. C. R.

A person who procured possession of a house, under a written agreement between him and the landlord, for a lease of twenty-one years, with a fraudulent intention to steal the fixtures thereto belonging, was, by stealing the lead affixed to the house, guilty of larceny on 4 Geo.

C. C. 850; 2 East, P. C. 594.

An indictment for stealing a copper pipe fixed to the dwelling-house of A. and B., is not supported by proof of stealing a pipe fixed to two rooms of which A. and B. are separate tenants in the same house. Rex v. Finch, 1 M. C. C. 418.

In support of an indictment for stealing lead fixed to a dwellinghouse, proof that the prosecutor received the rent is sufficient prima facie evidence of his ownership. Reg. v. Brummitt, L. & C. 9; 8 Cox, C. C. 413; 9 W. R. 357; 3 L. T., N. S. 679.

Where a yearly tenant of a house had at his own expense, during his term, hung bells, but quitted the premises, without removing them: -Held, that by remaining fixed to the freehold after the expiration of the term, they became the property of the landlord, and that the tenant could not maintain trover for them after the landlord had severed them from the freehold. Lyde v. Russell, 1 B. & Ad. 394.

#### 17. Cattle and other Animals.

#### (a) Statute.

By 24 & 25 Vict. c. 96, s. 10, "whosoever shall steal any horse, "mare, gelding, colt or filly, or any "bull, cow, ox, heifer or calf, or any "ram, ewe, sheep or lamb, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding fourteen years, "and not less than five years (27 & "28 Vict. c. 47), or to be imprison-"ed for any term not exceeding "two years, with or without hard "labour, and with or without sol-"itary confinement." Previous provision, 7 & 8 Geo. 4, c. 29, s. 25.)

## . (b) Horse-Stealing. What is. —If a horse is purchas-

ed by and delivered to the buyer, it is not felony though he immediately rides away with it without paying the purchase-money. Rex v. Harvey, 1 Leach, C. C. 467; 2 East, P. C. 669.

But obtaining a horse under the pretext of hiring it for a day, and immediately selling it, is felony, if the jury finds the hiring was animo Rex v. Pear, 1 Leach, C. furandi. C. 212; 2 East, P. C. 685, 697. And see Rex v. Tunnard, 2 East, P. C. 687; 1 Leach, C. C. 214, n.

If a thief goes to au inn, and, intending to steal a horse, directs the ostler to bring out his horse, pointing to that of the prosecutor, and the ostler, at his desire, leads out the horse for the prisoner to mount: this is a sufficient taking by the prisoner to support an indictment for horse-stealing. Rex v. Pitman, 2 C. & P. 423—Garrow.

Where the prisoners having entered a stable at night, and taking out horses, rode them thirty-two miles, and then left them at an inn, and were afterwards found pursuing their journey on foot; and the jury found that they took the horses merely with intent to ride and afterwards to leave them and not to return or make any further use of them:—Held, that this was a trespass and not a larceny. Phillips, 2 East, P. C. 662.

A prisoner received the prosecutor's horse to be agisted, and after a short time sold it:—Held not larceny. Rev v. Smith, 1 M. C. C. 473.

A., who intended to sell his mare. sent his servant to M. fair, his servant having no authority either to sell the mare, or deal with her in any way. The prisoner asked the servant the price, and desired the servant to trot her out; and the prisoner then went to two men, and, having talked to them walked away. These two men then came up and persuaded the servant to exchange the mare for a horse they had, and they

changed the saddles, and, without giving any money, rode away with the mare, leaving the servant with a horse of little value. Four days after the prisoner sold the mare at B., stating that he had got her in a chop at M. fair:-Held, that, as the servant had the mere charge of the mare, and had no right to deal with the property in her, the prisoner ought to be convicted of stealing her, providing that the jury was satisfied that the prisoner was in league with the two other men, and that the three, by a fraud in which each of them was to take his part and did take his part, induced the servant to part with possession of the mare under colour of exchange, but they intended all the while to steal the mare. Reg. v. Sheppard, 9 C. & P. 121--Coleridge.

If a person stealing other property takes a horse, not with the intent to steal it, but only to get off more conveniently with the other property which he has stolen, such taking of the horse is not a felony. Rex v. Crump, 1 C. & P. 658-

Garrow.

*Indictment.*]—In an indictment for horse-stealing, the animal, whether a horse, mare, gelding, colt or filly, may be described as a horse. v. Aldridge, 4 Cox, C. C. 143--Erle.

Foals and fillies were within 2 & 3 Edw. 6, c. 33, and were included in the words horse, gelding or mare, and evidence of stealing a mare filly supported an indictment for stealing a mare. Rex v. Welland, R. & R. C. C. 494.

By 7 & 8 Geo. 4, c. 29, s. 25, if any person shall steal any horse, mare, &c., or shall wilfully kill any of such cattle with intent to steal the carcase, every such offender shall be guilty of felony, and on convic-The 2 & 3 Will. tion suffer death. 4, c. 62, s. 1, reduced the punishment to transportation for life; and would give 24l. for the chop. They | 7 Will. 4 & 1 Vict. c. 90, s. 1, to

transportation for not less than fif- | Leach, C. C. 105; 2 East, P. C. 616. teen years. An indictment charged a person with feloniously stealing a mare, saddle and bridle, and did not conclude contra formam statuti. A verdict of guilty was found:--Held, that, as stealing the mare, as well as stealing the saddle and bridle, was a felony at common law, and not created or altered in its nature by statute, the offence was correctly described in the indictment, and the statutable punishment of fifteen years' transportation would attach to the stealing the mare. Williams v. Reg. (in error), 7 Q. B.

Evidence. — Two, indicted for horse-stealing in county A., were found in joint possession of two horses in that county, which they had jointly taken at different times and places in county B.:—Held, that evidence could be given of one only of the takings in county B., each taking being a separate felony. Rex v. Smith, R. & M. 295—Littledale.

Indictment for stealing two horses in Kent; the only evidence of stealing in Kent was that the constable having taken the prisoner in Surrey, and the prisoner having offered on some pretence to go to a place in Kent, the constable and the prisoner rode the horses there, and the prisoner escaped, leaving the horses with the constable :-Held, not sufficient. Rex v. Simmonds, 1 M. C. C. 408.

A. had agisted his horse with B., and in consequence of hearing of the loss of it, A. went to the field of B., where it was not :--Held, to be not sufficient proof of loss to support an indictment for horse-steal-Rex v. Yend, 6 C. & P. 176 ing. Gurney.

## (c) Cattle.

An indictment for stealing a cow cannot be supported by evidence of stealing a heifer. Rex. Cook, 1 Cox. C. C. 333. Fish. Dig.—21.

The beast, however old, is a heifer until she has had a calf.

The phrase bullock-stealing, in 7 Geo. 4, c. 64, s. 28, relating to the allowance of rewards in certain cases for the discovery of offenders, includes all cases of cattle-stealing of that particular description, e. g. ox, cow, heifer, &c. Rex v. Gillbrass, 7 C. & P. 445.

## (d) Sheep-Stealing.

An indictment for stealing a sheep is supported by proof of stealing a ewe or a ram, though the statute specifies "ram, ewe, sheep or lamb." Reg. v. M'Culley, 2 M. C. C. 34; 2 Lewin, C. C. 272.

A sheep was called in the indictment a ewe, and, by the witnesses, the proper name was said to be a ewe teg:—Held, that the description was bad. Reg. v. Jewett, 2 Cox, C. C. 227—Pollock.

On the trial of an indictment under 7 & 8 Geo. 4, c. 29, s. 25, for stealing "one sheep," some of the witnesses stated the animal to be a sheep, others a lamb. It was between nine and twelve months old; and the jury who convicted the prisoner found, that, in common parlance, according to the usual mode of describing such animals, it would be called a lamb. Conviction held right, the word "sheep" being general. Reg. v. Spicer, 1 C. & K. 699; 1 Den. C. C. 82.

On an indictment for sheep-stealing, a rig sheep is properly described as "one sheep." Rex v. Stroud, 6 C. & P. 535—Alderson.

A prisoner was indicted for sheepstealing. The prosecutor lost a sheep in September; it was found in the prisoner's possession in the March following. There was no There was no other evidence of larceny than the possession:—Held, that the period between the loss and the finding was too long to permit the case to Reg. v. Harris, 8 go to the jury.

Where a prisoner was found in the recent possession of some stolen sheep, of which he could give no satisfactory account, and it might reasonably be inferred from the circumstances that he did not steal them himself:—Held, that there was evidence for the jury that he received them knowing them to have been stolen. Reg. v. Langmead, L. & C. 427; 9 Cox, C. C. 464; 10 L. T., N. S. 350.

A. being tried for sheep-stealing, it was proposed to call the wife of B. to prove that A. and B. had jointly stolen the sheep, B. having been convicted of it at the previous quarter sessions:—Held, that she was a competent witness. Reg. v. Williams, 8 C. & P. 284—Alderson.

If a man kills a sheep in county A., and carries the carcase into county B., he may be convicted upon an indictment for stealing, taking and driving away sheep into county B. If a man kills a sheep in county A., and carries the carcase into county B., he cannot be convicted of killing the sheep with intent to kill the carcase in county B. Reg. v. Newland, 2 Cox, C. C. 283.

## (e) Deer.

Stealing Deer in uninclosed Forests. - By 24 & 25 Vict. c. 96, s. 12, "whosoever shall unlawfully "and wilfully course, hunt, snare "or carry away, or kill or wound, "or attempt to kill or wound, any "deer kept or being in the unin-"closed part of any forest, chase "or purlieu, shall for every such "offence, on conviction thereof be-" fore a justice of the peace, forfeit " and pay such sum, not exceeding "501., as to the justice shall seem "meet; and whosoever having been " previously convicted of any offence "relating to deer, for which a pecu-"niary penalty shall have been im-"posed by this or by any former "act of Parliament, shall after-"wards commit any of the offences "hereinbefore enumerated, whether |

"such second offence be of the "same description as the first or "not, shall be guilty of felony, and being convicted thereof shall be "liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, "with or without hard labour, and "with or without solitary confine-ment, and, if a male under the age of sixteen years, with or "without whipping." (Former provision, 7 & 8 Geo. 4, c. 29, s. 26.)

In inclosed Grounds. —By s. 13, "whosoever shall unlawfully and "wilfully course, hunt, snare or "carry away, or kill or wound, or attempt to kill or wound, any "deer kept or being in the inclosed "part of any forest, chase or pur-"lieu, or in any inclosed land where "deer shall be usually kept, shall "be guilty of felony, and, being "convicted thereof, shall be liable, "at the discretion of the court, to "be imprisoned for any term not "exceeding two years, with " without hard labour, and with or " without solitary confinement, and "if a male under the age of sixteen " years, with or without whipping." (Former provision, 7 & 8 Geo. 4, c. 29, s. 26.)

Unlawful Possession of Venison.]—"As to what is a suspicious "possession of venison," see s. 14.

Setting Engines for Taking or Killing.]—By s. 15, "whosoever "shall unlawfully and wilfully set "or use any snare or engine what- soever, for the purpose of taking "or killing deer, in any part of any forest, chase or purlieu, whether such part be inclosed or not, or in any fence or bank dividing the same from any land adjoining, or "in any inclosed land where deer "shall be usually kept, or shall un- "lawfully and wilfully destroy any part of the fence of any land "where any deer shall be then

"kept, shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money,
not exceeding 201., as to the justice shall seem meet." (Former provision, 7 & 8 Geo. 4, c. 29, s. 28.)

The 7 & 8 Geo. 4, c. 27, repealed 21 Edw. 1, stat. 2; 16 Geo. 3, c. 30; 42 Geo. 3, c. 107; 51 Geo. 3, c. 120; and so much of the Carta de Foresta, and of 3 Edw. 1, c. 20; 1 Edw. 3, stat.1, as related to this subject; and 24 & 25 Vict. c. 95, repeals 7 & 8 Geo. 4, c. 29.

What is Deer.]—The term deer includes all kinds of deer, all ages and both sexes. Reg. v. Strange, 1 Cox, C. C. 58—Maule.

Inclosures.]—An inclosure in the Forest of Dean, made under a statute, for the protection of timber, and surrounded by a ditch and a bank, which were sufficient to prevent cattle from getting into it, but over which the deer could pass in or out at their free will, was an inclosed part of a forest, within 7 & 8 Geo. 4, c. 29, s. 26. Reg. v. Money, 2 Russ. C. & M. 371—Erle.

The words "wherein deer shall be usually kept" refer to inclosed land only. *Ib*.

Convictions.]—On an indictment under 7 & 8 Geo. 4, c. 29, s. 26, for killing a deer after a previous summary conviction, a conviction by two justices of the previous offence was put in:—Held, that such a conviction was good. Rex v. Weale, 5 C. & P. 135—Park.

Upon an indictment for a second offence against 42 Geo. 3, c. 107, by killing deer, objections might have been taken to the conviction for the first offence, that it was not in the proper county, and that it was not correctly stated in the indictment for the second offence. Rex v. Allen, R. & R. C. C. 513.

"felony, a "felony, a "of shall "of the c" any term "with or "with or "with or "ment, a "age of "without Digitized by Microsoft®

A commitment under 7 & 8 Geo. 4, c. 29, s. 26, reciting a conviction that the defendant "did unlawfully kill and carry away one fallow deer, the property of her Majesty Queen Victoria, against the form of the statute," was bad for omitting to state that the deer was in the uninclosed part of some forest, chase or purlieu. Reg. v. King, 1 D. & L. 721; 8 Jur. 271; 13 L. J., M. C. 43—B. C.—Patteson.

Deer Keepers.]—By 24 & 25 Vict. c. 96, s. 16, "if any person "shall enter into any forest, chase " or purlieu, whether inclosed or "not, or into any inclosed land "where deer shall be usually kept, "with intent unlawfully to hunt, "course, wound, kill, snare or car-"ry away any deer, every person "intrusted with the care of such "deer, and any of his assistants, "whether in his presence or not, "may demand from every such of-" fender any gun, firearms, snare or "engine in his possession, and any "dog there brought for hunting, "coursing or killing deer, and in "case such offender shall not im-"mediately deliver up the same, "may seize and take the same from "him in any of those respective "places, or, upon pursuit made, in "any other place to which he may "have escaped therefrom, for the "nse of the owner of the deer; "and if any such offender shall "unlawfully beat or wound any "person intrusted with the care of "the deer, or any of his assistants, "in the execution of any of the "powers given by this act, every "such offender shall be guilty of "felony, and being convicted there-" of shall be liable, at the discretion " of the court, to be imprisoned for " any term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment, and, if a male under the "age of sixteen years, with or "without whipping." (Former en-

actment, 7 & 8 Geo. 4, c. 29, s. 29.) The 16 Geo. 3, c. 30, s. 9, authorized the seizing the guns of persons carrying them into grounds where deer are usually kept, with intent to destroy them, and made the beating or wounding the keepers, in the due execution of their offices, felony: - Held, that an assistantkeeper had no right to seize the person of one so armed in order to get his gun, without having first demanded his gun; and, consequently, if such person beat the keeper it was not within the statute, the keeper not being in the due execution of his office. Rex v. Amey, R. & R. C. C. 500.

Pulling a deer-keeper to the ground and holding him there while another person escapes, is not a beating of the deer-keeper within 7 & 8 Geo. 4, c. 29, s. 29. Reg. v Hale, 2 C. & K. 326—Maule.

A mere battery is not sufficient to come within this enactment. Ib.

There must be a beating in the popular sense of the word.

# (f) Doves or Pigeons.

By 24 & 25 Vict. c. 96, s. 23, "whosoever shall unlawfully and "wilfully kill, wound or take any "house-dove or pigeon under such " circumstances as shall not amount "to larceny at common law, shall "on conviction before a justice of "the peace, forfeit and pay, over "and above the value of the bird, "any sum not exceeding 21." (Former provision, 7 & 8 Geo. 4, c. 29, s. 33.)

This enactment does not apply where the killing, though unlawful, is done by the party for the protection of his own property, and under the bona fide belief that he is acting in the exercise of a legal right. Taylor v. Newman, 4 B. & S. 69; 9 Cox, C. C. 314; 32 L. J., M. C. 186; 11 W. R. 752; 8 L. T., N. S. 424.

Pigeons kept in an ordinary dove-

egress at all times by means of holes at the top, may be the subjects of larceny. Reg. v. Cheafor, 2 Den. C. C. 361; 5 Cox, C. C. 367 ; 21 L. J., M. Ć. 43.

# (g) Fish.

By 24 & 25 Vict. c. 96, s. 24, "whosoever shall unlawfully and "wilfully take or destroy any fish "in any water which shall run "through or be in any land ad-"joining or belonging to the dwell-"ing-house of any person being the "owner of such water, or having "a right of fishery therein, shall "be guilty of a misdemeanor;

"And whosoever shall unlaw-" fully and wilfully take or destroy, "or attempt to take or destroy, "any fish in any water not being "such as hereinhefore mentioned, "but which shall be private prop-"erty, or in which there shall be "any private right of fishery, shall, "on conviction thereof before a "justice of the peace, forfeit and "pay, over and above the value of "the fish taken or destroyed (if "any), such sum of money, not ex-"ceeding 51., as to the justice shall "seem meet: provided, that noth-"ing hereinbefore contained shall "extend to any person angling be-"tween the beginning of the last "hour before sunrise and the ex-"piration of the first hour after "sunset; but whosoever shall by "angling between the beginning of "the last hour before sunrise and "the expiration of the first hour " after sunset unlawfully and wil-"fully take or destroy, or attempt " to take or destroy, any fish in any "such water as first mentioned, "shall, on conviction before a jus-"tice of the peace, forfeit and pay " any sum not exceeding 51., and if "in any such water as last men-"tioned he shall, on the like con-"viction, forfeit and pay any sum, "not exceeding 21., as to the justice "shall seem meet; and if the cote, having liberty of ingress and | "boundary of any parish, town"ship or vill shall happen to be in " or by the side of any such water "as is in this section before men-"tioned, it shall be sufficient to "prove that the offence was com-"mitted either in the parish, town-"ship, or vill named in the indict-"ment or information, or in any "parish, township, or vill adjoin-"ing thereto." (Former provision, 7 & 8 Geo. 4, c. 29, s. 36.)

By s. 25, "if any person shall at "any time be found fishing against "the provisions of this act, the "owner of the ground, water, or "fishery where such offender shall "be so found, his servant, or any "person authorised by him, may "demand from such offender any "rod, line, hook, net, or other im-"plement for taking or destroying "fish which shall then be in his "possession; and in case such of-"fender shall not immediately de-"liver up the same, may seize and "take the same from him for the "use of such owner: provided, "that any person angling against "the provisions of this act, be-"tween the beginning of the last "hour before sunrise and the ex-"piration of the first hour after "sunset, from whom any imple-"ment used by anglers shall be "taken, or by whom the same "shall be so delivered up, shall by "the taking or delivering thereof "be exempted from the payment "of any damages or penalty for "such angling." (Similar to 7 & 8 Geo. 4, c. 29, s. 35.)

By s. 26, "whosoever shall steal "any oysters or oyster brood from "any oyster bed, laying, or fishery, "being the property of any other "person, and sufficiently marked "out or known as such, shall be "guilty of felony, and being con-"victed thereof shall be liable to "be punished as in the case of "simple larceny;

"And whosoever shall unlaw-"fully and wilfully use any dredge,

"whatsoever, within the limits of "any oyster bed, laying or fishery, being the property of any other "person, and sufficiently marked "out or known as such, for the " purpose of taking oysters or oys-"ter brood, although none shall be "actually taken, or shall unlaw-"fully and wilfully, with any net, "instrument, or engine, drag upon "the ground or soil of any such "fishery, shall be guilty of a mis-"demeanor, and being convicted "thereof shall be liable, at the dis-" cretion of the court, to be impris-"oned for any term not exceeding "three months, with or without "hard labour, and with or without " solitary confinement;

"And it shall be sufficient in "any indictment to describe either "by name or otherwise the bed, "laying, or fishery in which any of "the said offences shall have been "committed, without stating the "same to be in any particular par-"ish, township or vill: provided, "that nothing in this section con-"tained shall prevent any person "from catching or fishing for any "floating fish within the limits of "any oyster fishery with any net, "instrument, or engine adapted for "taking floating fish only."

The 7 & 8 Geo. 4, c. 27, repealed the 31 Hen. 8, c. 2; 5 Eliz. c. 21; 5 Geo. 3, c. 14; and 24 & 25 Vict. c. 95, repeals 7 & 8 Geo. 4, c. 29; and 7 Will. 4 & 1 Vict. c. 90, s. 5.

Semble, an indictment on 5 Geo. 3, c. 14, s. 1, for stealing fish out of a river running through an inclosed park, need not have stated the ways, means, or devices by which the fish were taken. Carradice, R. & R. C. C. 205.

On an indictment on 5 Geo. 3, c. 14, s. 1, for entering an inclosed park, and taking fish bred, kept, and preserved there, in the river Kent, running through the park, it appeared that the park was walled round, except where the river en-"or any net, instrument, or engine tered and passed out, and that Digitized by Microsoft®

there were fences to keep in the deer, that there was nothing to keep in the fish, that they were not known to breed there, that nothing was done to stock the river, but that persons were never suffered to angle in the park without leave:

—Held, that this was not a place where fish were to be considered as "bred, kept, or preserved" within the meaning of the act. Ib.

A defendant formed an oysterbed in a part of the Menai Straits where persons had been accustomed to dredge for oysters. The plaintiff bought of a dredger a quantity of oysters, when the defendant, having been informed that the oysters were taken from his bed, gave the plaintiff into custody on a charge of having in his possession stolen oysters. The plaintiff having been discharged, brought an action for false imprisonment, when the defendant relied on 7 & 8 Geo. 4, c. 29, s. 36: and, in order to shew that he acted bonâ fide and under the belief that the oysters were stolen, he tendered in evidence the record of the conviction of a person who had shortly before been tried for taking oysters from the same bed of the defendant:-Held, that the record, merely as such, was inadmissible. Thomas v. Russell, 9 Exch. 764; 2 C. L. R. 542: 23 L. J., Exch. 233.

Objection to a conviction for unlawfully taking and killing fish, in that it did not allege that the defendant had not the license or consent of the owner; but that it merely alleged that he took and killed the fish unlawfully and against the form of the statute, is good, and therefore it was quashed. Rex v. Mallinson, 2 Burr. 679; 2 Ld. Kenvon, 384.

A stream of water running by the side of a piece of ground, which is inclosed on every side except that on which it is bounded by the water, was not a stream in inclosed ground, within 5 Geo. 3, c. 14, s. 3, so as to subject a person fishing therein to

the penalty inflicted by that act. Lisle v. Brown, 1 Marsh. 127; 5 Tannt. 440.

A person who fished in a fishery belonging to another, but to which he had a claim, for the purpose of giving occasion to an action in order to try the right, was not liable to a penalty under 5 Geo. 3, c. 14. Kinnersley v. Orpe, 2 Dougl. 517.

A conviction under 5 Geo. 3, c. 14, for killing fish in a private river, without the consent of the owner, should state the offence to have been committed in an inclosed ground. Wickes v. Clutterbuck, 10 Moore, 63; 2 Bing. 483; S. P., Rex v. Sadler, 2 Chit. 519.

And that it was without the consent of such owner. Rex v. Daman, 2 B. & A. 378; 1 Chit. 147: S. P., Rex v. Corden, 4 Burr. 2279.

So, a conviction on the same statute, for fishing without consent of the owner, "in part of a certain stream, which runs between B. in the parish of A., in the county of W., and C., in the same parish and county," quashed, because it did not appear that the intermediate course of the stream betwen the two termini in which the offence was alleged to be committed was in the county of W., and within the jurisdiction of the convicting magistrate. Rex v. Edwards, 1 East, 278.

# (h) Dogs.

By 24 & 25 Vict. c. 96, s. 18, "whosoever shall steal any dog " shall, on conviction thereof before "two justices of the peace, either " be committed to the common gaol " or house of correction, there to be "imprisoned, or to be imprisoned "and kept to hard labour, for any "term not exceeding six months, or "shall forfeit and pay, over and "above the value of the said dog, "such sum of money, not exceed-"ing 201., as to the said justices "shall seem meet; and whosoever, "having been convicted of any such " offence, either against this or any

"former act of Parliament, shall afterwards steal any dog, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour." (Former provision, 8 & 9 Viet. c. 47, s. 2.)

By s. 19, "whosoever shall un-"lawfully have in his possession or " on his premises any stolen dog, or "the skin of any stolen dog, know-"ing such dog to have been stolen " or such skin to be the skin of a "stolen dog, shall, on conviction "thereof before two justices of the "peace, be liable to pay such "sum of money, not exceeding 201., "as to such justices shall seem meet; and whosoever, having " been convicted of any such offence, "either against this or any former "act of Parliament, shall after-"wards be gnilty of any such of-"fence as in this section before "mentioned, shall be guilty of a " misdemeanor, and being convicted "thereof shall be liable, at the dis-"cretion of the court, to be impris-"oned for any term not exceeding "eighteen months, with or without "hard labour." (Former provision, 8 & 9 Vict. c. 47, s. 3.)

By s. 20, "whosoever shall cor-"ruptly take any money or reward, "directly or indirectly, under pre-"tence or upon account of aiding "any person to recover any dog "which shall have been stolen, or "which shall be in possession of any "person not being the owner there-"of, shall be guilty of a misdemean-"or, and being convicted thereof "shall be liable, at the discretion of "the court, to be imprisoned for "any term not exceeding eighteen " months, with or without hard la-"bour." (Former provision, 7 & 8 Vict. c. 47, s. 4.)

Dogs are not the subject-matter of larceny at common law. Reg. v.

Robinson, Bell, C. C. 34; 5 Jur., N. S. 203; 28 L. J., M. C. 58.

#### (i) Birds and other Animals.

By s. 21, "whosoever shall steal "any bird, beast, or other animal "ordinarily kept in a state of con-"finement or for any domestic pur-" pose, not being the subject of lar-"ceny at common law, or shall wil-"fully kill any such bird, beast or "animal, with intent to steal the "same or any part thereof, shall, "on conviction thereof before a jus-"tice of the peace, at the discretion " of the justice, either be committed "to the common gaol or house of " correction, there to be imprisoned "only, or to be imprisoned and "kept to hard labour for any term "not exceeding six months, or else "shall forfeit and pay, over and " above the value of the bird, beast, " or other animal, such sum of mon-"ey not exceeding 20l. as to the just-"ice shall seem meet; and whoso-"ever, having been convicted of "any such offence, either against "this or any former act of Parlia-"ment, shall afterwards commit "any offence in this section before "mentioned, and shall be convicted "thereof in like manner, shall be "committed to the common gaol " or house of correction, there to be "kept to hard labour for such term "not exceeding twelve months as "the convicting justice shall think " fit."

By s. 22, "if any such bird, or any "of the plumage thereof, or any dog, "or any such beast, or the skin there"of, or any such animal, or any "part thereof, shall be found in the "possession or on the premises of any person, any justice may restore the same respectively to the "owner thereof; and any person in whose possession or on whose "premises such bird or the plumage "thereof, or such beast or the skin "thereof, or such animal or any "part thereof, shall be so found

"(such person knowing that the bird, beast, or animal has been stolen, or that the plumage is the plumage of a stolen bird, or that the skin is the skin of a stolen beast, or that the part is a part of a stolen animal), shall, on conviction before a justice of the peace, be liable for the first of fence to such forfeiture, and for every subsequent offence to such punishment, as any person convicted of stealing any beast or bird is made liable to by the last preceding section."

If pigeons are so far tame that they come home every night to roost in wooden boxes, hung on the outside of the house of their owner, and a party comes in the night and steals them out of these boxes, this is a larceny. Rex v. Brooks, 4 C.

& P. 131—Taddy, Serjt.

Ferrets, though tame and saleable, cannot be the subject of larceny. Rex v. Searing, R. & R. C. C. 350.

Pheasants that have been reared under hens, and have never become wild, may be the subject of larceny. Reg. v. Head, 1 F. & F. 350—

Campbell.

So young pheasants hatched by a hen, and under the care of the hen, in a coop, in a field at a distance from a dwelling-house, are the subject of larceny. Reg. v. Corey, 10 Cox, C. C. 23—Channell. S. P., Reg. v. Garnham, 8 Cox, C. C. 451; 2 F. & F. 347—Pollock.

Partridges about three weeks old and able to fly a little, which had been hatched and reared by a common hen, placed under a hen-coop, and after the removal of the coop remained about the place with the hen as her brood, sleeping under her wings at night, may be the subject of larceny. Reg. v. Shickle, 38 L. J., M. C. 21; 1 L. R., C. C. 158; 17 W. R. 144; 19 L. T., N. S. 327; 11 Cox, C. C. 189.

(j) Carcases or Skins.

By 24 & 25 Vict. c. 96, s. 11, "whosoever shall wilfully kill any "animal, with intent to steal the "carcase, skin or any part of the "animal so killed, shall be guilty of felony, and being convicted thereof shall be liable to the same punishment as if he had been convicted of feloniously stealing the same, "provided the offence of stealing "the animal so killed would have "amounted to felony." (Former provision, 7 & 8 Geo. 4, c. 29, s. 25.)

An indictment for stealing lambs is sustained by proof that the carcases were found in the owner's ground, and only the skins taken away. Rex v. Rawkins, 2 East, P.

C. 617.

In Rex v. Williams, 1 M. C. C. 107, where a man was indicted under 14 Geo. 2, c. 6, for killing sheep with intent to steal the whole carcase, proof of killing with intent to steal part of the carcase was sufficient to support the charge.

Cutting off part of a sheep whilst it is alive, with intent to steal such part, will support an indictment for killing with intent to steal part of the carcase, if the cutting off must occasion its death. Rex v. Clay, R.

& R. C. C. 387.

On the trial of an indictment for killing a ewe with intent to steal the carcase, it appeared that the prisoner wounded the ewe by cutting her throat, and was then interrupted by the prosecutor, and the ewe died of the wound two days afterwards. It was found by the jury who convicted the prisoner, that he intended to steal the carcase of the ewe; and the judges held the conviction right. Reg. v. Sutton, 8 C. & P. 291; Reg. v. M' Cully, 2 Lewin, C. C. 272; 2 M. C. C. 34.

An indictment charged in the first count, that A. and B. killed a sheep, with intent to steal one of its

hind legs; and in the second count, that C. received nine pounds weight of mutton so stolen as aforesaid; and in the third count, that C. received the mutton "of a certain evil-disposed person," scienter, &c.:-Held, that on this form of indictment, all the three prisoners might be properly convicted. Rex v. Wheeler, 7 C. & P. 170-Coleridge.

Pulling wool from the bodies of live sheep and lambs, animo furandi, is larceny. Rex v. Martin, 1 Leach, C. C. 171; 2 East, P. C. 618. So it is larceny to take the milk

from a cow.

## 18. The Ownership.

General Instances of Allegation and Proof.]—Property cannot be laid in a person who has never had either actual or constructive possession. Rex v. Adams, R. & R. C. C. 225.

The property stolen may be described as the real owner's, although it never was actually in his possession, but in the possession of his agent only. Rex v. Remnant, R. &. R. C. C. 136.

Goods belonging to a guest, stolen at an inn, may be laid to be the property either of the inn-keeper or of the guest. Rex v. Todd, 1 Leach, C. C. 357, n.

So goods stolen from a washerwoman may be laid to be her property. Rex v. Parker, 1 Leach, C. C. 357, n.

So in case of an agister, who takes in sheep to agist for another, they may be laid to be his property. Rex v. Woodward, 1 Leach, C. C. 357 n; 2 East, P. C. 653.

The coach-glass of a gentleman's coach, standing in a coachmaster's yard, may be laid to be the property of the coach-master. Rex v. Taylor, 1 Leach, C. C. 356; 2 East, P. C. 653.

The property in goods stolen, is properly alleged to be in the driver of a coach, from the boot of which

2 East, P. C. 653; 2 Leach, C. C.

The goods of a furnished lodging must be described as the lodger's goods, not as the goods of the original owner. Rex v. Belstead, R. & R. C. C. 411; Rex v. Brunswick, 1 M. C. C. 26.

If a corn factor purchases a ship laden with corn, and sends his lighter to fetch it from the ship to his wharf, a delivery of the corn on board the lighter puts it into the possession of the corn-factor, although the lighterman never delivers it at the factor's wharf. Rex v. Spears, 2 Leach, C. C. 825; 2 East, P. C. 568.

If a corn-factor purchases the cargo of a vessel laden with corn, and sends his servant with a lighter to fetch it from the ship in loose bulk, and the servant contrives to have a certain portion of it put into sacks by the meters on board the ship, and takes the corn so sacked feloniously away in the lighter immediately from the ship, he may be indicted for stealing the property of the corn-factor, although it was never put into his lighter, or otherwise reduced into the corn-factor's possession. Rex v. Abrahat, 2 Leach, C. C. 824; 2 East, P. C. 569.

The prisoner was sent by his fellow workmen to their common employer, to get the wages due to all of them. He received the money in a lump sum, wrapped up in paper, with the names of the workmen and the sum due to each written inside:—Held, that he received the money as the agent of his fellow workmen, and not as the servant of the employer, and that, in an indictment against him for stealing it, the money was wrongly described as the property of the employer. Reg. v. Barnes, 1 L. R., C. C. 45; 12 Jur., N. S. 549; 35 L. J., M. C. 204; 14 W. R. 805; 14 L. T., N. S. 601.

The wife of A. was employed by they were taken. Rex v. Deakin, | her father to sell sheep, and receive the amount at K. She did so; but before she left K. a 5l. note, which she received in payment for the sheep, was stolen from her:—Held, that the note was properly described as the property of the husband. Rex v. Roberts, 7 C. & P. 485—Littledale.

B. was charged with stealing money, alleged to be the money of A. A. had received the money as the servant of an industrial co-operative society, for goods sold to members of the society, and he was accountable to the treasurer for the monies he received. B. was a member of the society, and had abstracted some money from a till under A.'s charge :—Held, that there was a sufficient possession of the money in A. to sustain a conviction for larceny against B. Reg. v. Burgess, L. & C. 299; 9 Cox, C. C. 302; 9 Jur., N. S. 582; 32 L. J., M. C. 185; 11 W. R. 602; 8 L. T., N. S. 255.

An indictment for larceny, and receiving goods knowing them to have been stolen, is bad, if it does not state to whom the goods belonged; and the defect cannot be amended, nor was it cured by 14 & 15 Vict. c. 100, s. 8. Reg. v. Ward, 7 Cox, C. C. 421.

Iron found in the bed of a canal during the course of cleansing was returned by the canal company to the true owners, if capable of being identified, otherwise it was kept by the canal company: --Held, that in an indictment against a stranger for larceny of such iron, the property was properly laid in the canal company. Reg. v.Rowe, 8 Cox, C. C. 139; 5 Jur., N. S. 274.

Churchwardens and Overseers.]—
Money was stolen from an ancient poor's box fixed up in a church:—
Held, that, in an indictment for stealing it, the property would be properly laid in the vicar and churchwardens; and that an in-

dictment in which the property was stated to be that of "J. N. and others," J. N. being the vicar, was correct, without alleging J. N. to be the vicar, or the "others" to be the churchwardens. Reg. v. Wortley, 2 C. & K. 283—C. C. R.

An indictment for stealing goods may, under 55 Geo. 3, c. 137, state them to be the goods of the overseers of the poor, for the time being, of the parish of A.; for this will import that they belonged, at the time of the theft, to the persons who were the then overseers. Rex v. Went, R. & R. C. C. 359.

Inhabitants of a County.]—A room attached to a shire-hall, and built and used for the purpose of a ball and concert room, is within 7 Geo. 4, c. 64, s. 5, which provides, that in any indictment for any felony or misdemeanor, committed in, upon, or with respect to any court or other building erected or maintained at the expense of any county, in, on, or with respect to any goods or chattels provided for or at the expense of the county, to be used in or with any such court, it shall be sufficient to state any such property, real or personal, to belong to the inhabitants of such county. Req. v.Winbow, 5 Cox, C. C. 346.

A chandelier, which had been used as a fixture in the ball-room, and subsequently removed to another part of the building, but not used for any purpose, is also within the same statute, and is properly described as the property of the inhabitants of the county. *Ib*.

A hall-keeper, appointed by the justices, is not bailee of any of the contents of the shire-hall, but is the servant of the inhabitants, and, if he converts to his own use any of the property committed to his care, he may be indicted for larceny. *Ib*.

stealing it, the property would be properly laid in the vicar and convicted on a count which charged churchwardens; and that an in-

the property of G. and others, his | masters. G. and others were directors of an unincorporated insurance company, managed its affairs, appointed, paid, controlled and dismissed the clerks and other servants, and had the charge and custody of all the books and papers of the company. The company had a drawing account with G. & Co., and used to send their passbooks in every week to be written up, and their messenger went on the following morning to bring it back, when it was returned, together with the cheques, &c., of the preceding week. A. was a salaried clerk in the office of the company, and also a shareholder; it was his duty to receive the pass-book and vouchers from the messenger, and to preserve the vouchers for the use of the company. G. & Co. delivered the pass-book, containing among other things a cashed cheque for 1,400*l*, to the messenger of the company, who delivered the book and cheque to A. in the usual way, and he thereupon fraudulently destroyed it:—Held, that the cheque was the property of the directors, and that A., though a shareholder in the company, had not a joint property in it, and was properly convicted of larceny. Reg. v. Watts, 2 Den. C. C. 14; T. & M. 342; 14 Jur. 870; 19 L. J., M. C. 193; 4 Cox, C. C. 336.

The London Dock Company by mistake delivered two hogsheads of sugar to a carrier, who produced delivery notes authorizing them to deliver two other hogsheads of sugar, the property of B. The carrier broke bulk, and was indicted for larceny :--Held, that the property was well described as the property of the London Dock Company, they having still a special property in the chattels, notwithstanding that they parted with the possession by mistake. Reg. v. Vincent, 3 C. & K. 246; 2 Den. M. C. C. 278; Car. & M. 525.

C. C. 464; 16 Jur. 457; 21 L. J., M. C. 109; 5 Cox, C. C. 537.

If in an indictment for larceny the property of the goods is laid in A., and the property is proved to be in the London Dock Company, this was amendable under 14 & 15 Vict. c. 100, s. 1. *Ib*.

In an indictment against a servant of the West India Dock Company, for stealing a quantity of canvas and hessen belonging to the company from their warehouses, it was sufficient to state the property to be "the goods and chattels of the West India Dock Company," and not necessary, notwithstanding the words of the 1 & 2 Will. 4, c. lii, s. 133, to allege, in addition, that it was feloniously taken from the company. Reg. v. Stoke, 8 C. & P. 151 — Mirehouse, C. S.

In an indictment for larceny, the property was laid to be in G., manager of the Dudley and West Bromwich Bank. The property belonged to the banking company, a company consisting of more than twenty partners, but no registration of it, or appointment of any manager or public officer, was proved. indictment was amended by laying the property in W. and others, W. being one of the partners:-Held, that the ownership, as amended, was rightly laid under 7 Geo. 4, c. 64, s. 14, and that it need not have been laid in the public officer (presuming there was one), under 7 Geo. 4, c. 46, s. 9. Reg. v. Pritchard, 8 Cox, C. C. 461; L. & C. 34; 7 Jur., N. S. 557; 30 L. J., M. C. 169; 9 W. R. 579; 4 L. T., N. S. 340.

The 1 & 2 Viet. c. 85, was continued by 3 & 4 Vict. c. 111; and a shareholder in a joint stock banking company may be indicted for embezzling or stealing the money of the company, it being laid as the property of a public officer of the company correctly appointed and registered. Reg. v. Atkinson, 2

Father or Son. —An indictment for stealing the wearing apparel of a son, who is an apprentice to his father, and furnished with clothes in pursuance of his indentures, should lay them to be the property of the son, and not of the father. Rex v. Forsyate, 1 Leach, C. C. 463.

If a father buys and pays for cloth which is made into trousers for his son, who is seventeen years of age, these trousers may, on au indictment for larceny, be laid as the property of the father. Reg v. Hughes, Car. & M. 593—Patteson.

In such cases the property may be laid either in the father or in the son, but the better course is to lay

it in the latter. Ib.

Goods under Execution. ]—If goods seized under a fi. fa. are stolen, they may be described as the goods of the party against whom the writ issued; for though they are in custodiâ legis, the original owner continues to have a property in them until they are sold. Rex v. Eastall, 2 Russ. C. & M. 291, 382.

Peers and Peeresses.]-In an indictment for larceny of goods, the property of a peer who is a baron, the goods may be laid as the goods and chattels of "G., T. R., Lord D.," without styling him Baron D., although the more proper way to describe the peer is by his christian name, and his degree in the peerage, as duke, earl, baron, or the like. Reg. v. Pitts, 8 C. & P. 771; Erskine; S. P., Reg. v. Caley, 5 Jur. 709—Taddy, Serjt.

An indictment for larceny, laying the goods stolen to be the property of Victory Baroness Turkheim, is good, although her name is Selinda Victoire. Rex v. Sulls, 2 Leach,

C. C. 861.

Trustees of Benefit and Friendly Societies. —An indictment for the

trustees who are not incorporated, must lay the property to be in them by name as individuals, subjoining a description of the character in which they are authorized to act. Rex v. Sherrington, 1 Leach, C. C. 513.

Where a friendly society had appointed a treasurer and two trustees, one of the trustees was held guilty of larceny in stealing the money of the society, the money being alleged in the indictment to be the property of the treasurer, and having been taken from his hands with the intention of stealing. Reg. v. Cain, 2 M. C. C. 204; Car. & M. 309.

The goods in a dissenting chapel, vested in trustees, cannot be described in an indictment as the goods of a servant who has merely the custody of the chapel and things in it, to clean and keep in order, although he has the key of the chapel, and no other person but the minister has another key. Rex v. Hutchinson, R. & R. C. C. 412.

A bible had been given to a society of Wesleyans; and it had been bound at the expense of the society. B. stated that he was one of the trustees of the chapel, and also a member of the society.  $trust\ deed\ was\ produced: -Held,$ that, in an indictment for stealing the Bible, the property was rightly laid in B. and others. Rex v. Boulton, 5 C. & P. 537—Parke.

A box belonging to a benefit society was stolen from a room in a public-house. Two of the stewards had keys of this box; and, by the rules of the society, the landlord ought to have had a key, but in fact he had not:-Held, that the prisoner might be convicted on a count laying the property in the landlord alone. Rex v. Wymer, 4 C. & P. 391—Parke.

indicted for stealing A. was money, the property of "F. and others." "F. and others" were larceny of property belonging to trustees of a friendly society; and A. and H. were members of the society. H. was in possession of a shop where goods were sold for the society, and had the sole management, and was answerable for property and money coming into his possession. A., while assisting in the shop, without salary, took the money from the till. The prosecution failing to prove the society was duly inrolled, the indictment was amended by inserting H.'s name, instead of "F. and others." It was then proved, on behalf of A., that the society was inrolled:—Held, that a conviction upon the amended indictment might be sustained. Reg. v. Webster, 7 Jur., N. S. 1208; 31 L. J., M. C. 17; 10 W. R. 20; 5 L. T., N. S. 327-C. C. R.

On Death of Parties. —In an indictment for stealing property which has belonged to a deceased person, who appointed executors, who would not prove the will, the property must be laid in the ordinary, and not in a person who, after the commission of the offence, but before the indictment, has taken out letters of administration with annexed; because the rights of an administrator only commence from the date of the letters, as distinguished from those of an executor, which commence, not from the granting of the probate, but from the death of the testator. Rex v. Smith, 7 C. & P. 147—Bolland and Coleridge.

Where two had jointly stock upon a farm, and one died, leaving several children:—Held, that the property in sheep stolen was properly alleged to be in the survivor and the children; the former swearing that he considered himself to hold one moiety for the benefit of the latter. Rex v. Scott, 2 East, P. C. 655; R. & R. C. C. 13.

D. & C. were partners; C. died intestate, leaving a widow and children; from the time of his death the widow acted as partner

with D., and attended the business of the shop; three weeks after C.'s death part of the goods was stolen; they were described in the indictment as the goods of D. and the widow:—Held, that the description was right. Rex v. Gaby, R. & R. C. C. 178.

On an indictment for stealing sheep, which had been stolen after the death of the late owner, there being no formal proof of a will or an administration, but it appearing that the sheep were in charge of the shepherd, under the orders of a steward, who was under the order of the prosecutors, and took directions from and rendered accounts to them:—Held, that there was sufficient evidence of a possession in them, which would sustain the indictment. Reg. v. King, 4 F. & F. 493—Crompton.

A knife was stolen from the pocket of A., as his dead body lay in a road at S., in the diocese of W. The last place of abode of A. was at T., in the diocese of G.; but A.'s father stated that he believed his son had left T. to come to live with him, but did not know whether his son had given up his lodgings at T.:—Held, that this was sufficient proof to support a count for larceny, laying the property in the Lord Bishop of W. Reg. v. Tippin, Car. & M. 545—Patteson.

A. was convicted upon an indictment charging her with stealing numerous articles, laid as the property of the ordinary. The evidence was, that the articles, which belonged to a deceased person, were after her death found in A.'s possession; that search had been made for a will, and none found; and that a small portion only of the articles had been seen in the house of the deceased after her death:—Held, that the property was rightly laid in the ordinary, and that the sessions had done right in leaving the case, as to the whole of the articles, to the jury, and in refusing to put the

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prosecutor to an election to proceed only in respect of the taking any particular articles. Reg. v. Johnson, Dears. & B. C. C. 340; 4 Jur., N. S. 55; 27 L. J., M. C. 52; 7 Cox, C. C. 379.

On Conviction of Felons.]—Goods of an adjudged felon, stolen from his house, in the possession and occupation of his wife, may be described in an indictment for larceny as the goods of the Queen. But the house cannot be so described without office found. Reg. v. Whitehead, 2 M. C. C. 181; S. P., Coombes v. Queen's Proctor, 16 Jur. 820—Pre. C.

## 19. Receivers of Stolen Property.

#### (a) Statutory Provisions.

By 24 & 25 Vict. c. 96, s. 91, "whosoever shall receive any chat-"tel, money, valuable security, or "other property whatsoever, the "stealing, taking, extorting, obtain-"ing, embezzling, or otherwise dis-"posing whereof shall amount to a "felony either at common law or "by virtue of this act, knowing the "same to have been feloniously "stolen, taken, extorted, obtained, "embezzled, or disposed of, shall be "guilty of felony, and may be in-"dicted and convicted either as an "accessory after the fact or for a "substantive felony, and in the lat-"ter case, whether the principal "felon shall or shall not have been "previously convicted, or shall or "shall not be amenable to justice; "and every such receiver, howsoev-"er convicted, shall be liable, at "the discretion of the court, to be "kept in penal servitude for any "term not exceeding fourteen and "not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two, " with or without hard labour, and "with or without solitary confine-"ment, and, if a male under the |" by this act made liable."

"age of sixteen, with or without "whipping: provided, that no per"son, howsoever tried for receiving 
"as aforesaid, shall be liable to be 
"prosecuted a second time for the 
"same offence." (Former provision, 
7 & 8 Geo. 4, c. 29, s. 54.)

By s. 95, "whosoever shall re-" ceive any chattel, money, valuable "security, or other property what-"soever, the stealing, taking, ob-"taining, converting, or disposing whereof is made a misdemeanor "by this act, knowing the same to "have been unlawfully stolen, tak-"en, obtained, converted, or dispos-"ed of, shall be guilty of a misde-"meanor, and may be indicted and "convicted thereof, whether the "person guilty of the principal mis-"demeanor shall or shall not have "been previously convicted thereof, " or shall or shall not be amenable "to justice; and every such receiv-"er, being convicted thereof, shall "be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "seven years and not less than five "years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not "exceeding two years, with or with-"out hard labour, and with or with-"out solitary confinement, and, if a "male under the age of sixteen " years, with or without whipping." By s. 97, "where the stealing or "taking of any property whatsoever " is by this act punishable on sum-"mary conviction, either for every "offence, or for the first and second " offence only, or for the first offence "only, any person who shall receive "any such property, knowing the "same to be unlawfully come by, "shall, on conviction thereof before "a justice of the peace, be liable, "for every first, second, or subse-"quent offence of receiving, to the " same forfeiture and punishment to "which a person guilty of a first, "second or subsequent offence of "stealing or taking such property is

(b) Who are Receivers.

If a receiver of stolen goods receives them for the mere purpose of concealment, without deriving any profit at all, he is just as much a receiver as if he had purchased them. Rex v. Richardson, 6 C. & P. 335 —Gaselee, Vanghan and Taunton.

Without proof of an actual taking into possession, an indictment for receiving goods knowing them to have been stolen cannot be sustained. Reg. v. Hill, 3 New Sess. Cas. 648; 1 Den. C. C. 453; T. & M. 150; 2 C. & K. 978; 13 Jur. 545; 18 L. J., M. C. 199.

W. stole a watch from A.; and while W. and L. were in custody together, W. told L. that he had "planted" the watch under a flag in a soot-cellar of L.'s house. this L. was discharged, and went to the flag and took up the watch, and sent his wife to pawn it:-Held, that, if L. thus took the watch in consequence of W.'s information, W. telling L. in order that he might use the information by taking the watch, L. was indictable for this as a receiver of stolen goods; but that if this was an act done by L. in opposition to W., or against his will, it might be a question whether it would be a receiving. Reg. Wade, 1 C. & K. 739—Pollock. Reg. v.

A prisoner admits having bought an article, which is subsequently found in his house; that is sufficient evidence for a jury to convict of receiving without proof of an actual receipt, or that he had ever been at the house from before the purchase to the time of the charge. Reg. v. Matthews, T. & M. 337; 1 Den. C. C. 596; 14 Jur. 513.

Two men, having stolen some fowls, put them into a saek and carried them into the house of the prisoner's father at about half-past four o'clock in the morning. remaining in the house about ten minutes, the two men were seen to come out at a back door, one of them carrying the sack, and the following day A. was taken into

prisoner going before them with a light. The stable-door was closed by one of the party, and when the policeman entered he found the two thieves and the prisoner standing round the sack, which lay on the floor untied, as if bargaining for the fowls:—Held, that this was not a receiving within the statute, the prisoner never having had the goods under his control, and the whole transaction being only incheate. Reg. v. Wiley, 2 Den. C. C. 37; 4 Cox, C. C. 412; T. & M. 367; 15 Jur. 134; 20 L. J., M. C. 4.

It is not necessary to prove an actual manual possession of stolen goods, in order to sustain an indictment for receiving the goods, but it is sufficient if the goods are shewn to have been under the control of the person charged with receiving. Reg. v. Smith, Dears. C. C. 494; 1 Jur., N. S. 575; 24 L. J., M. C. 135; 6 Cox, C. C. 554.

Stolen goods were found by the owner in the pockets of the thief; a policeman was sent for, who took the goods and subsequently returned them to the thief, and the owner then sent the latter to sell them where he had sold others; he accordingly sold them at the shop D. was tried and conof D. victed of receiving the goods knowing them to have been stolen:— Held, that the conviction was wrong, as the facts did not constitute a receiving of stolen goods within 7 & 8 Geo. 4, c. 29, s. 54. Reg. v. Dolan, Dears. C. C. 436; 3 C. L. R. 295; 1 Jur., N. S. 72; 24 L. J., M. C. 59; 6 Cox, C. C. 449.

A. was indicted for feloniously receiving a watch and a hat. It was proved that a policeman, in consequence of information received from B. (the thief), went to a room in a lodging-house where A. slept, and in a box in that room found the hat. A. admitted that the hat had been brought there by B., but denied all. knowledge of the watch. On the

custody, and he then told the policeman that he knew where the watch was, but did not like to say anything about it before the people of the house. A. then took the policeman to a place where he said the watch was, but it was not found there, but he afterwards sent a boy for the watch, and on the boy bringing the watch to A., he gave it to the policeman:—Held, that there was sufficient evidence to go to the jury. Reg. v. Hobson, Dears. C. C. 400.

It is not necessary, to constitute a receiving of stolen goods, that the person indicted should have had manual possession of the goods; but directing a servant to dispose of them, as by pawning or otherwise, will be sufficient to support the charge. Stolen property was brought by the thief into A.'s shop; A., with guilty knowledge, called a servant and directed her to take the stolen goods to the pawn office and "pawn them for the girl " (the thief). servant did so accordingly, and brought back the money, which she handed to the thief in her mistress's A. never had manual presence. possession of either the goods or the money:—Held, that this amounted to a receiving by A. of the stolen property. Reg. v. Miller, 6 Cox, C. C. 353.

W., T. and the prisoner were indicted, W. and T. in one count for embezzling goods, and in another for stealing them; the prisoner for receiving the goods knowing them to have been stolen. The jury found W. guilty of embezzlement, acquitted T., and found the prisoner guilty of receiving:—Held, that the conviction of the prisoner was right. Reg. v. Frampton, Dears. & B. C. C. 585; 4 Jur., N. S. 566; 27 L. J., M. C. 229; 8 Cox, C. C. 16.

Stolen goods were delivered by a "of the thief to the wife of the prisoner in his absence; she paid 6d. on account, "or pa but the amount to be paid was not then fixed. The prisoner and the s. 14.)

principal felon afterwards met, when the prisoner, with the knowledge that the goods had been stolen, agreed upon the price and paid the balance:—Held, that he was properly convicted of receiving the goods knowing them to be stolen. Reg. v. Woodward, L. & C. 122; 9 Cox, C. C. 95; 8 Jur., N. S. 104; 31 L. J., M. C. 91; 10 W. R. 298; 5 L. T., N. S. 686.

A prisoner was convicted of feloniously receiving stolen goods under the following circumstances:-The goods were stolen, and sent by the thief in a parcel by railway, addressed to the prisoner. A policeman belonging to the railway company, from information he had received, examined the parcel at the railway station at the place of its destination, and stopped it. It was called for by one of the thieves on the day of its arrival, and refused to him. A porter of the company, the next day, by the direction of the policeman, took it to a house which the thief who had called for it designated, and it was there received by the prisoner:—Held, that the conviction was wrong, as the goods had ceased to be stolen goods, within the statute, at the time of the receipt by the prisoner. Req. v. Schmidt, 10 Cox, C. C. 172; 1 L. R., C. C. 15; 12 Jur., N. S. 149; 35 L. J., M. C. 94; 14 W. R. 286; 13 L. T., N. S. 679.

# (c) Joint Receivers.

By 24 & 25 Vict. c. 96, s. 94, "if upon the trial of any two or "more persons indicted for jointly receiving any property it shall be "proved that one or more of such "persons separately received any part or parts of such property, it shall be lawful for the jury to contivit, upon such indictment, such "of the said persons as shall be "proved to have received any part or parts of such property." (Former provision, 14 & 15 Vict. c. 100, s. 14.)

Two or more persons may be indicted jointly for receiving stolen property, knowing it to have been stolen, though each successively received the whole of the same at different times, and it makes no difference whether the receipt was direct from the felon or from an intermediate person. Reg. v. Reardon or Rearden, 1 L. R., C. C. 31; 12 Jur., N. S. 476; 35 L. J., M. C. 171; 14 W. R. 663; 14 L. T., N. S. 449.

If two are charged jointly with receiving stolen goods, a joint act of receiving must be proved. that one received in the absence of the other, and afterwards delivered to him, will not suffice. Messingham, 1 M. C. C. 257.

A. received goods from B. (who was the servant of C.) under colour of a pretended sale:—Held, that the fact of his having received such goods with knowledge that B. had no authority to sell, and that he was in fact defrauding his master, was sufficient evidence to support an indictment for larceny against A. jointly with B. Reg. v. Hornby, 1 C. & K. 305—Coltman.

D. and G. were charged with jointly receiving stolen goods. evidence was, that D. first received the goods on the road between B. and S.; and that subsequently G. received a portion of them at S.:— Held, that the evidence as to the separate act of receiving by G. was improperly admitted, and that the indictment was satisfied by the proof of the receiving by D. Reg. v. Dovey, 15 Jur. 230; 20 L. J., M. C. 105; 4 Cox, C. C. 428--C. C. R.

Plea by one prisoner, indicted singly for receiving stolen goods, of autrefois acquit, under an indictment against him and four others, on which one was convicted, and the prisoner and the three others were acquitted, is good. Rex v. Dann, 1 M. C. C. 424.

Where A., knowing that goods have been stolen, directs B., his servant, to receive them into his prem- | that she has stolen it. Reg. v.

ises, and B., in pursuance of that direction, afterwards receives them in A.'s absence, B. knowing that they have been stolen, they may be jointly indicted for receiving them. Reg. v. Parr. 2 M. & Rob. 346— Maule.

Two were convicted under a count charging them with receiving goods knowing them to have been stolen, upon proof that they were present, aiding and abetting a third receiver, who was found in actual possession of the box containing the goods, but the two former never had actual possession of the box: — Held, that the conviction was right. Reg. v. Rogers, 37 L. J., M. C. 83—C. C. R.

# (d) Husband and wife.

A wife cannot be convicted of feloniously receiving goods stolen by her husband. Reg. v. Brooks, Dears. C. C. 184; 17 Jur. 400; 22 L. J., M. C. 121; 6 Cox, C. C. 148.

A wife, jointly with her husband, cannot be convicted of receiving stolen goods. Reg. v. Mathews, T. & M. 337; 1 Den. C. C. 596; 14 Jur. 513.

Where both were found guilty on a joint indictment, the conviction of the husband affirmed, of the wife quashed. Ib.

Husband and wife were jointly indicted for receiving goods, knowing them to have been stolen. The jury found both guilty, and that the wife received the goods without the control or knowledge of, and apart from her husband, and that he afterwards adopted his wife's receipt:—Held, that the conviction against the husband could Reg. v. Dring, not be sustained. Dears. & B. C. C. 329; 3 Jur., N. S. 1132; 7 Cox, C. C. 382.

But a husband may be convicted of feloniously receiving property which his wife has stolen voluntarily and without any constraint on his part, if he receives it, knowing

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M'Athey, L. & C. 250; 9 Cox C. C. 251; 8 Jur., N. S. 1218; 32 L. J., M. C. 35; 11 W. R. 73; 7 L. T., N. S. 433.

20. Indictment for Stealing and Receiving.

## (a) Stealing.

Several Counts. -By 24 & 25 Vict. c. 96, s. 5, "it shall be lawful "to insert several counts in the "same indictment against the same " person for any number of distinct "acts of stealing not exceeding "three, which may have been com-"mitted by him against the same "person within the space of six "months from the first to the last " of such acts, and to proceed there-"on for all or any of them." (Similar to 14 & 15 Vict. c. 100, s. 16.)

Election of Larcenies charged. — By s. 6, "if upon the trial of any "indictment for larceny it shall ap-"pear that the property alleged in " such indictment to have been stol-"en at one time was taken at "different times, the prosecutor "shall not by reason thereof be re-"quired to elect upon which tak-"ing he will proceed, unless it shall "appear that there were more than "three takings, or that more than "the space of six months elapsed "between the first and the last of " such takings; and in either of such "last-mentioned cases the prosecut-"or shall be required to elect to "proceed for such number of tak-"ings, not exceeding three, as ap-"pear to have taken place within "the period of six months from the "first to the last of such takings." (Similar to former provision, 14 & 15 Vict. c. 100, s. 17.)

On an indictment for stealing fowls, in a first count laid the 15th of February, for stealing ten fowls, and in the third count laid on the 13th of February in the same year, for stealing three fowls,

tween the two occasions. Reg. v.Lonsdale, 4 F. & F. 56—Pollock.

A. was tried upon an indictment which contained two counts, the first for embezzlement, and the second for larceny as a bailee. At the close of the case for the prosecution, it was objected that the indictment was bad for misjoinder of counts, and that the counsel for the prosecution could not be allowed to elect upon which count he would pro-The objection was overruled. ceed. The counsel for the prosecution elected to proceed upon the second count, and A. was convicted:-Held, the conviction was right. Reg. v. Holman, 9 Cox, C. C. 201; L. & C. C. C. 177; 8 Jur., N. S. 1082; 10 W. R. 718; 6 L. T., N. S. 474.

Before this Enactment. ]— Two persons indicted for horse-stealing in county A., were found in joint possession of two horses in that county, which they had jointly taken at different times and places in county B.:—Held, that as each taking in county B. was a separate felony, the prosecutor's counsel must elect on which to proceed. Rex v. Smith, R. & M. 295—Little-

Form of Allegations. —An indictment charged that A. on &c., being the servant of K., on the same day, &c., one gold ring, &c., then and there being his goods and chattels, feloniously did steal:—Held, that the fair import of the charge was, that A. was the servant of K. at the time when the theft was committed. Rex v. Somerton, 7 B. & C. 463.

An indictment charged that the prisoner, whilst a servant of A., stole the money of A. The prisoner was not the servant of A., but the servant of B., and the money which he stole was the money of B., but in the possession of A. as the agent of B.:—Held, that the allegation as to the prosecutor was put to elect be the prisoner being servant might be

rejected as surplusage, and the prisoner convicted of simple larceny, the money being properly alleged to belong to A., who had a special property therein. Reg. v. Jennings, Dears. & B. C. C. 447; 4 Jur., N. S. 146; 7 Cox, C. C. 397.

If goods are laid in an indictment as "the property of A. W. G. esq., the addition is not material, and if he is not an esquire, it is no ground for an acquittal. Rex v. Ogilvie, 2 C. & P. 230—Burrough.

Description of Instrument. ]—By 14 & 15 Vict. c. 100, s. 5, "in any "indictment for stealing, destroying, "or concealing any instrument, it "shall be sufficient to describe such "instrument by any name or desig-" nation by which the same may be "usually known, or by the purport "thereof, without setting out any "copy, or fac simile thereof, or "otherwise describing the same or "the value thereof.

Coin and Bank Notes. ]—By 14 & 15 Vict. c. 100, s. 18, "in every in-"dietment in which it shall be nec-" essary to make any averment as to "any money, or any note to the "Bank of England, or any other "bank, it shall be sufficient to de-"scribe such money or bank-note "simply as money, without specify-"ing any particular coin or bank-"note; and such allegation, so far "as regards the description of the "property, shall be sustained by " proof of any amount of coin, or of "any bank-note, although the par-"ticular species of coin of which "such amount was composed, or "the particular nature of the bank-"note, shall not be proved."

Bank notes are properly described in an indictment for larceny within this enactment as money, although at the time when they were stolen they were not in circulation, but were in the hands of the bankers Reg. v. West, Dears. themselves. & B. C. C. 109; 2 Jur., N. S. 1123; 26 L. J., M. C. 6; 7 Cox, C. C. 183. the Governor and Company of the

An indictment, charging a stealing of one or more specific thing or things, is not supported, except by proof of some one or more of the specific things so charged. Reg. v. Bond, 1 Den. C. C. 517; T. & M. 242; 4 New Sess. Cas. 143; 14 Jur. 399; 19 L. J., M. C. 138.

Therfore, an indictment charging a stealing of 70 pieces of the current coin of the realm, called sovereigns, of the value of 70l., 140 pieces, called half-sovereigns, 500 pieces, &c., called crowns, &c., is not supported by proof of a stealing of a sum of money consisting of some or other of the coins mentioned in the indictment, without proof of some or one or more of the specific coins there charged to have been stolen.Ib.

In an indictment for larceny, two shillings stolen were described as "two pieces of the current silver coin of the realm, called shillings, of the value of two shillings, of the goods and chattels of S. F.": the words "goods and chattels" may be rejected as surplusage, and the indictment is good. Reg. v. Radley, 3 New Sess. Cas. 651; T. & M. 144; 1 Den. C. C. 450; 2 C. & K. 974; 13 Jur. 544; 18 L. J., M. C. 184; 3 Cox, C. C. 460.

Before this Enactment. —An indictment for stealing 10l. in monies numbered was not sufficient; some of the pieces of which that money consisted should be specified. v. Fry, R. & R. C. C. 482.

If the thing stolen was described as a bank post-bill, and was not set out, the court could not take judicial notice that it was a promissory note, or that it was such an instrument as under 2 Geo. 2, c. 25, might be the subject of larceny, although it was described as made for the payment of money. Rex v. Chard. R. & R. C. C. 488.

Where an indictment described a bank-note as signed by A. H. for Bank of England, and a prisoner was convicted; such conviction was bad, there being no evidence of A. H.'s signature. Rex v. Craven, R. & R. C. C. 14; 2 East, P. C. 601.

Dollars or Portugal money, not current by proclamation, were not goods within 24 Geo. 2, c. 45. Rex v. Leigh, 1 Leach, C. C. 52; S. P., Rex v. Grimes, 2 East, P. C. 646.

Cheques.]—The servant of a drawer of a cheque on bankers, to whom it is given to deliver to a third person, appropriating the value to his own use, may be charged in an indictment for stealing a valuable security, to wit, a cheque of the value specified, without stating the drawees to be bankers. Reg. v. Heath, 2 M. C. C. 33.

Articles of Trade or Merchandise.]—A set of new handkerchiefs in a piece may be described as so many handkerchiefs, though they are not separated one from another, if the pattern designates each, and they are described in the trade as so many handkerchiefs. Rex v. Nibbs, 1 M. C. C. 25.

In an indictment for receiving stolen tin, ingots of tin are properly described as so many pounds weight of tin. Reg. v. Mansfield, Car. & M. 140; 5 Jur. 661—Coleridge.

So it would be proper to describe a bar of iron as so many pounds of iron. *Ib*.

An indictment for stealing "three eggs of the value of twopence, of the goods and chattels of S. H.," is bad, for not stating the species of eggs, because it does not shew that the eggs stolen might not be such as are not the subject of larceny. Reg. v. Cox, 1 C. & K. 494—Tindal.

An indictment describing the property stolen as "one ham, of the value of 10s., of the goods and chattels of T. H.", is sufficient, as the word "ham" has acquired a meaning which is universally understood;

and it is no objection, that it may be taken to mean the ham of an animal feræ naturæ or of a base nature, inasmuch as the flesh of a dead animal feræ naturæ is the subject of larceny, and the expenditure of labour on the flesh or the skin of animals of a base nature, at common law, imparts to its value, and makes it also the subject of larceny. Reg. v. Gallears, 3 New Sess. Cas. 704; 1 Den. C. C. 501; 2 C. & K. 981; T. & M. 196; 13 Jur. 1010; 19 L. J., M. C. 13.

Animals.]—In cases of larceny of animals feræ naturæ, the indictment must shew that they were either dead, tame, or confined, otherwise they must be presumed to be in their original state. Rex v. Rough, 2 East, P. C. 607. And see Rex v. Hudson, 2 East, P. C. 611.

And it is not sufficient to add, "of the goods and chattels" of such an one. Rex v. Rough, 2 East, P. C. 607.

An indictment for stealing a dead animal should state that it was dead; for upon a general statement that a party stole the animal, it is to be intended that he stole it alive. Rex v. Edwards, R. & R. C. C. 497—Holroyd.

Upon an indictment for stealing a live animal, evidence cannot be given of stealing a dead one. *Ib*.

But in Rex v. Puckering, 1 M. C. C. 242, A. was indicted for receiving a lamb; when he received the lamb it was dead, and it was held that the indictment was sufficient, it being immaterial, as to the prisoner's offence, whether the lamb was alive or dead, his offence, and the punishment for it, being in both cases the same. This case appears to overrule Rex v. Edwards, R. & R. C. C. 497.

An indictment for stealing four live tame turkeys was laid in the county of H.; it appeared that the prisoner stole them alive in the county of C. and killed them there, and then brought them into the county of H. :- Held, that as the prisoner had not the turkeys in a live state in the county of H., the charge as laid was not proved, and that the word "live" in the description could not be rejected as surplusage, and therefore that the indictment was bad. Rex v. Halloway, 1 C. & P. 128—Hullock.

An indictment charged the prisoner with having feloniously stolen four tame pigeons:—Held, that the word "tame" sufficiently shewed that they were reclaimed, and that such tame and reclaimed pigeons are the subjects of larceny, not withstanding that they have the means of ingress and egress at pleasure. Reg. v. Cheafor, 2 Den. C. C. 361; T. & M. 621; 15 Jur. 1065; 21 L. J., M. C. 43; 5 Cox, C. C. 367.

## (b) Stealing and Receiving.

By 24 & 25 Vict. c. 96, s. 92, "in " any indictment containing a charge "of feloniously stealing any prop-"erty, it shall be lawful to add a "count or several counts for felon-"iously receiving the same or any " part or parts thereof, knowing the "same to have been stolen, and in " any indictment for feloniously re-"ceiving any property knowing it "to have been stolen, it shall be "lawful to add a count for felon-"iously stealing the same;"

" And where any such indictment "shall have been preferred and "found against any person, the "prosecutor shall not be put to his "election, but it shall be lawful for "the jury who shall try the same to "find a verdict of guilty, either of "stealing the property, or of receiv-"ing the same, or any part or parts "thereof, knowing the same to have

"been stolen;

"And if such indictment shall "have been preferred and found "against two or more persons, it "shall be lawful for the jury who "shall try the same to find all or "any of the said persons guilty eith-ranted by the evidence, although

"er of stealing the property or of "receiving the same, or any part "or parts thereof, knowing the "same to have been stolen, or to "find one or more of the said per-"sons guilty of stealing the proper-"ty, and the other or others of them "guilty of receiving the same or any "part or parts thereof knowing the "same to have been stolen." (Former provisions, 11 & 12 Vict. c. 46, s. 3; 14 & 15 Vict. c. 100, s. 14.)

By s. 93, "whenever any proper-"ty whatsoever shall have been "stolen, taken, extorted, obtained, "embezzled or otherwise disposed " of in such a manner as to amount "to a felony, either at common law " or by virtue of this act, any num-"ber of receivers at different times "of such property, or of any part "or parts thereof, may be charged "with substantive felonies in the "same indictment, and may be "tried together, notwithstanding "that the principal felon shall not "be included in the same indict-"ment, or shall not be in custody "or amenable to justice." (Former provision, 14 & 15 Viet., c. 100 s.

Where a count for feloniously receiving property knowing it to be stolen is joined with a count for feloniously stealing, it must appear with sufficient certainty that the property is the same in each count. Reg. v. Sarsfield, 6 Cox, C. C. 12.

In indictments under 11 & 12 Vict. c. 46, s. 3, there may be as many counts charging a felonious receiving as there are counts charging stealing; and the prosecutor cannot be put to his election on what count or counts he will proceed. Reg. v. Beeton, 1 Den. C. C. 414; T. & M. 87; 2 C. & K. 960; 4 New Sess. Cas. 60; 13 Jur. 394; 18 L. J., M. C. 117; 3 Cox, C. C. 451.

Where a person is charged in two counts with stealing and receiving, the jury may return a verdict of guilty on the latter count, if war-

the evidence is also consistent with the prisoner having been a principal in the second degree in the stealing. Reg. v. Hilton, Bell, C. C. 20; 5 Jur., N. S. 47; 28 L. J., M. C. 28; 7 W. R. 59; 32 L. T. 151.

A count for stealing articles may not be joined with a count for receiving those and other articles, knowing them to have been stolen. Reg. v. Ward, 2 F. & F. 19 — Willes.

A first count charged the prisoner with stealing certain goods and chattels, and a second count charged him with receiving "the goods and chattels aforesaid, of the value aforesaid, so as aforesaid stolen." After objection that he could not be found to have feloniously received goods stolen by himself the case went to the jury, and he was acquitted upon the first count and convicted upon the second:—Held, that the conviction was good. Reg. v. *Huntley*, Bell, C. C. 238; 8 Cox, C. C. 260; 6 Jur., N. S. 80; 29 L. J., M. C. 170; 8 W. R. 183; 1 L. T., N. S. 384.

A count for receiving stolen goods in a different county from that in which the trial takes place, coupled with other counts for the larceny, under the 11 & 12 Vict. c. 46, must, by distinct and express averments, shew upon the face of it jurisdiction within the 7 & 8 Geo. 4, c. 29, s. 56. Reg. v. Martin, 3 New Sess. Cas. 575; T. & M. 78; 1 Den. C. C. 398; 2 C. & K. 950; 13 Jur. 368; 18 L. J., M. C. 137.

A receiver may be indicted for receiving goods stolen by persons unknown. Rex v. Thomas, 2 East, P. C. 781; S. P., Rex v. Baxter, 2 East, P. C. 781; 5 T. R. 83; 2 Leach, C. C. 578.

A receiver, in the case of a sheep feloniously stolen alive and killed, should be stated to have received mutton. Rex v. Cowell, 2 East, P. C. 617.

An indictment against a receiver of stolen goods must aver the guilty

offence, correctly. Rex v. Kernon, 2 Russ. C. & M. 562—Bayley.

A count for a substantive felony in receiving stolen goods, which charged that the goods were stolen by "a certain evil-disposed person," is good. Rex v. Jervis, 6 C. & P. 156—Tindal.

To bring a case of receiving within 7 & 8 Geo. 4, c. 29, s. 55, the indictment must allege the goods to have been obtained by false pretences and known to have been so. It is not enough to allege them to have been "unlawfully obtained, taken and carried away." Wilson, 2 M. C. C. 52.

An indictment for receiving stolen goods alleged that the prisoner received the goods of A., "he, the said A., then knowing them to have been stolen." After a verdict of guilty, the counsel moved an arrest of judgment, on the ground that the scienter was omitted; but the quarter sessions amended the indictment by striking out "A.," and substituting the name of the prisoner:—Held, first, that it was bad as originally framed. Reg. v. Larkin, Dears. C. C. 365; 2 C. L. R. 775; 18 Jur. 539; 23 L. J., M. C.

Held, secondly, that the objection was taken at the proper time. Held, thirdly, that the indictment was not amendable after verdict. Ib.

On an indictment for stealing and receiving a mixture, it appeared that the thief had stolen two sorts of grain, and mixed them and sold them to the prisoner:—Held, that the latter could not be convicted on such indictment. Reg. v. Robinson, 4 F. & F. 43—Pollock.

Where a prisoner was indicted for stealing goods, and in a subsequent count for receiving the goods, "so as aforesaid feloniously stolen," and the jury acquitted of the stealing and convicted of the receiving, the conviction was affirmed upon a case knowledge, which is the gist of the reserved upon a motion in arrest of judgment. Reg. v. Craddock, T. &
M. 361; 2 Den. C. C. 31; 14 Jur.
1031; 20 L. J., M. C. 31; 4 Cox, C.
C. 409.

Where the receiving is so laid, the judge should direct the jury to acquit upon the count for receiving, if they should not find the prisoner guilty of stealing. *Ib.* 

#### 21. Jurisdiction to try.

Stealing. — By 24 & 25 Vict. c. 96, s. 114, "if any person shall have in " his possession in any one part of the "United Kingdom any chattel, mon-"ey, valuable security or other prop-"erty whatsoever, which he shall "have stolen or otherwise felonious-"ly taken in any other part of the "United Kingdom, he may be dealt "with, indicted, tried and punished "for larceny or theft in that part of "the United Kingdom where he "shall so have such property, in the "same manner as if he had actually "stolen or taken it in that part; and "if any person in any one part of the "United Kingdom shall receive or "have any chattel, money, valuable "security or other property whatso-"ever which shall have been stolen or "otherwise feloniously taken in any "other part of the United Kingdom, "such person knowing such proper-"ty to have been stolen or otherwise "feloniously taken, he may be dealt "with, indicted, tried and punished "for such offence in that part of the "United Kingdom where he shall "so receive or have such property, "in the same manner as if it had "been originally stolen or taken in "that part." (Former provision, 7 & 8 Geo. 4, c. 29, s. 76.)

By 18 & 19 Vict. c. 126, "just"ices at petty sessions may try and
"convict in a summary way per"sons charged with having com"mitted simple larceny, where the
"value of the whole of the property
"alleged to have been stolen does
"not, in the judgment of the just"ices, exceed 5s., or with having

"attempted to commit larceny from the person, or simple larceny."

Larceny must be tried in the county where committed; but the offence is considered as committed in every county into which the thief carries the goods. Rew v. Thompson, 2 Russ. C. & M. 328.

If a man steals goods in one county, and carries them into another, it will be larceny in the latter, though the goods are not carried into the latter county until long after the original theft. Rex v. Parkin, 1 M. C. C. 45.

If a parish is partly situate in the county of W., and partly in the county of S., it is sufficient, in an indictment for larceny, to state the offence to have been committed at the parish of H., in the county of W. Rex v. Perkins, 4 C. & P. 363—Park.

The court of quarter sessions has jurisdiction to try cases of larceny committed on the high seas where the offender is apprehended within the jurisdiction of such court. Reg. v. Peel, L. & C. C. C. 231; 9 Cox, C. C. 220; 32 L. J., M. C. 65; 8 Jur., N. S. 1185; 11 W. R. 40; 7 L. T., N. S. 336.

The prisoner stole a watch at Liverpool, and sent it by railway to a confederate in London:—Held, that the constructive possession still remained in the prisoner, and that he was triable at the Middlesex sessions. Reg. v. Rogers, 1 L. R. C. C. 136; 18 L. T., N. S. 414; 16 W. R. 733; 37 L. J., M. C. 83; 11 Cox, C. C. 38.

A person had stolen goods in Guernsey and brought them to England, where he was taken and committed for trial:—Held, that, Guernsey not being a part of the United Kingdom, he could not be convicted of larceny, for having them in his possession here, nor of receiving in England the goods so stolen in Guernsey. Reg. v. Debruiel, 11 Cox, C. C. 207—Byles.

Receiving.]—By 24 & 25 Vict. c. 96, s. 96, "whosoever shall receive "any chattel, money, valuable se-"curity or other property whatso-"ever, knowing the same to have "been feloniously or unlawfully "stolen, taken, obtained, converted "or disposed of, may, whether "charged as an accessory after the "fact to the felony, or with a sub-"stantive felony, or with a misde-"meanor only, be dealt with, in-"dicted, tried and punished in any "county or place, in which he shall "have or shall have had any such "property in his possession, or in "any county or place in which the "party guilty of the principal fel-"ony or misdemeanor may by law "be tried, in the same manner as "such receiver may be dealt with, "indicted, tried and punished in the " county or place where he actually "received such property." (Former enactment, 7 & 8 Geo. 4, c. 29, s.

The half of a bank note, which had been stolen during its transit through the post-office from S. in Wiltshire to Bristol, was afterwards inclosed by the prisoner in a letter addressed to the bankers at S., requesting payment of it. This letter was posted by the prisoner at Bath, and arrived with its contents in due course at S. There was no other evidence of any receipt or possession by the prisoner in Wiltshire:— Held, upon an indictment for receiving the stolen half note, that he was rightly tried in Wiltshire, as the possession of the post-office servants, or of the bankers in Wiltshire, was his possession, and the case therefore was within 7 & 8 Geo. 4, c. 29, s. 56. Reg. v. Cryer, Dears. & B. C. C. 324; 3 Jur., N. S. 698; 26 L. J., M. C. 192.

Within Admiralty Jurisdiction.]
—By 24 & 25 Vict. c. 96, s. 115,
"all indictable offences mentioned
"in the act which shall be com"mitted within the jurisdiction of

"the Admiralty of England or Ire-" land shall be deemed to be offences "of the same nature, and liable to "the same punishments, as if they "had been committed upon the land "in England or Treland, and may "be dealt with, inquired of, tried "and determined in any county or "place in which the offender shall "be apprehended or be in custody; "and in any indictment for any such "offence, or for being an accessory "to any such offence, the venue in "the margin shall be the same as if "the offence had been committed in "such county or place, and the of-"fence itself shall be averred to have "been committed on the high seas": " provided, that nothing herein con-"tained shall alter or affect any of "the laws relating to the govern-"ment of her Majesty's land or na-"val forces."

#### 22. Evidence.

Stealing.]—A statement made by a prisoner before suspicion attaches to him, and before search made, in order to account for his possession of property, which he is afterwards charged with having stolen, is admissible as evidence for him. Reg. v. Abraham, 2 C. & K. 550—Alderson.

Where a prisoner charged with larceny has given two different accounts of the way in which he became possessed of the stolen property, it is not incumbent on the prosecutor to call as witnesses persons whom, in one of the statements, he says could prove his innocence, with a view of disproving that statement, but it may be prudent in the prosecutor to have these persons in attendance at the trial, though he does not call them, to avoid the effect of the observations by the prisoner or his counsel that these persons could prove the prisoner's innocence, but that he has not the means of procuring their attendance. Reg.v. Dibley, 2 C. & K. 818—Platt.

Neither upon an indictment for

stealing nor receiving can evidence be given that the prisoner had at the time, or previously, other stolen goods in his possession. Reg. v. Oddy, T. & M. 593; 2 Den. C. C. 264; 20 L. J., M. C. 108; 5 Cox, C. C. 210.

Where a person stole two pigs belonging to the same person at the same time, and after being convicted and punished for stealing one of the pigs, was indicted at a subsequent assize for stealing the other: —Held, that this might legally be done; but semble, that, in such a case, the second prosecution ought not to be proceeded with. Reg. v.Brettell, Car. & M. 609—Cresswell.

A prisoner was indicted for stealing three articles. Having taken the first article, he returned in about two minutes, and took the second, and then returned in half an hour and took the third:—Held, that the last taking was a distinct felony, and could not be given in evidence with the other two; but, that the interval of time between the first and second taking was so short, that they must be considered as parts of the same transaction. v. Birdseye, 4 C. & P. 386—Little-

A. went to the shop of B., and asked for shawls for Mrs. D. to look at; B. gave her five, she pawned two, and three were found at her lodgings. Mrs. D. was not called as a witness:—Held, that A. could not be convicted of a larceny in stealing the goods of B. Rex v. Savage, 5 C. & P. 143—Patteson.

W. was indicted for larceny for stealing six pounds of brass from a foundry. The only suggested evidence offered at the trial was, that the prisoner, who was employed upon the premises, had been seen to come into the place where the brass was kept :--Held, that there was not a scintilla of evidence to Reg. v. Walker, go to the jury. Dears. C. C. 280.

stealing four sacks of barley and three sack bags from their master. The prisoners and B. were employed by the prosecutor to winnow barley, which he had mixed with canary seed. One of the prisoners fetched several sacks from the prosecutor's house, which he and B. filled with barley. The two prisoners then sent B. home before the usual time. At twelve o'clock on the night of the same day, the carter went into the stable with a lantern, and shortly afterwards the prisoners entered the stable. In a few minutes after this the prosecutor saw the carter in the loft above with a lantern, and found the prisoners concealed under straw in the loft, and then in a dust-bin in a stable beneath he found three sacks full of barley mixed with canary seed, which he swore was of the same kind which he had mixed. was no part of the duty of the prisoners to place the barley in sacks or to put the sacks of barley into the dust-bin. The jury found both the prisoners guilty:—Held, that the evidence was sufficient to support Reg. v. Samways, the conviction. Dears. C. C. 371.

Though no portion of the prosecutor's goods has been missed, it is a question for the jury, under all the circumstances of the case, whether the goods, which are the subject of the indictment, are his property. Reg. v. Hooper, 1 F. & F. 85— Willes.

Upon the trial of an indictment for larceny, if the circumstantial evidence satisfies the jury of the guilt of the prisoner, he may be convicted, though the prosecutor is unable to swear that he has lost the thing charged to have been stolen. Reg. v. Burton, 6 Cox, C. C. 293; 23 L. J., M. C. 52.

Production of Article Stolen. — On an indictment against A. and B., for burglary, one of the articles Two prisoners were charged with | stolen (the only one directly proved

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to have been in the possession of either of them) being a ring, which was described particularly by the prosecutor, and proved to have had an inscription upon it, and to have been just like one he produced; and one of the prisoners being proved to have shewn, soon after the burglary, a ring which was proved to have been just like that produced, and to have had an inscription upon it, but no notice to produce which had been given:— Held, that the contents of the inscription on the prosecutor's ring could not be proved, and that, as there had been no notice given to the prisoner to produce the ring shewn by him to the witness, the contents of the inscription upon it could not be proved. Reg. v. Farr. 4 F. & F. 336—Channell.

On an indictment for the larceny of a bill of exchange obtained from the prosecutor, under a pretence of discounting it, parol evidence of the bill may be given after proof of a subpæna duces tecum given to the person in whose possession it was shewn to be previously to the trial, but who did not attend. Rex v. Aickles, 1 Leach, C. C. 294; 2 East,

P. C. 675.

Of Receiving. —If the prisoner at different times receives property stolen from the prosecutor, although the substantive charge must be confined to some one receiving, yet the other receivings may be given in evidence to shew a guilty knowledge that the goods were stolen. Rex v. Dunn, Car. C. L. 132; 1 M. C. C. 146.

A prisoner was indicted for receiving stolen goods, knowing them to have been stolen; to prove the scienter, evidence was given, that on a previous occasion other stolen goods, the property of different owners, had been found in the possession of the prisoner:—Held, that the evidence was improperly adof the law of England, that proof that a man had committed one offence is no proof that he has committed another, and as the possession of stolen goods on a previous occasion could not shew any knowledge on the part of the prisoner that the particular goods mentioned in the indictment\_ were  $Reg. \ v. \ Oddy, \ 2 \ Den. \ C. \ C. \ 264; \ 15$ Juř. 517; 20 L. J., M. C. 108; 5 Cox, C. C. 210.

If an indictment against a receiver states the principal felony to have been committed by A., whatever would have been evidence of the principal felony to convict A., is receivable to prove this allegation on the trial of the receiver, but is not Rex v. Blick, 4 C. & conclusive.

P. 377—Bosanquet.

In an indictment for receiving stolen goods, knowing them to have been stolen by a person named, the stealing by the person must be proved, or the receiver must be acquitted. Rex v. Woolford, 1 M. & Rob. 384—Patteson.

Stolen property being found concealed in an old engine-house, and it being watched, the prisoners were taking it away :--Held, that, to warrant the conviction of the prisoners on an indictment charging them as receivers, the jury must be satisfied that the property had been stolen by some other person to the knowledge of the prisoners, and that there should be some evidence to shew that such was the case. Rex v. Densley, 6 C. & P. 399—Patteson.

A prisoner was to be tried on three indictments: for receiving stolen tin, for stealing iron, and for receiving stolen brass. A constable went with a search-warrant to search the prisoner's premises for stolen iron, and, having read the warrant to the prisoner, the latter made a statement:—Held, on the trial of the first indictment, that the whole of the statement was receivable, although part of it related to the mitted, as it is a general principle charge respecting the iron; and also, that evidence might be given, that, at the time of the search, the prisoner endeavored to conceal some brass, and also, that almost immediately after he was taken away from the premises, at the conclusion of the search, his wife carried some tin under her cloak from a warehouse on the premises. Reg. v. Mansfield, Car. & M. 140—Coleridge.

On an indictment against A. for stealing, and B. for receiving goods, evidence that on various former occasions portions of the commodity stolen have been missed, and that the prisoners have, after such occasions, been found selling such a commodity; and that on the last occasion it was part of what was stolen, is sufficient to fix the receiver with a guilty knowledge. Reg. v. Nicholls, 1 F. & F. 51—Cockburn.

To justify a conviction for receiving stolen property in the case of goods found, it is not sufficient to shew that the prisoner had a general knowledge of the circumstances under which the goods were taken, unless the jury is also satisfied that he knew that the circumstances were such as constituted a larceny. Reg. v. Adams, 1 F. & F. 86—Crowder.

An admission of his guilt, made by the thief while in custody, in the presence of the receiver, is evidence against the receiver. Reg. v. Cox, 1 F. & F. 90—Crowder.

In an indictment for receiving goods, knowing them to have been stolen, belief without actual knowledge is sufficient to sustain it. Reg. v. White, 1 F. & F. 665—Bramwell.

In an indictment for receiving goods knowing them to be stolen, evidence that the thief had at one time been lawfully employed to sell such articles to the prisoner, will warrant an acquittal in the absence of any evidence that the prisoner knew that the authority had

been withdrawn. Reg. v. Wood, 1 F. & F. 497—Martin.

The prisoner had been a lodger in the prosecutor's house, and left under circumstances not disclosed. On the following day the prosecutor's wife also left the house, taking with her a small bundle. Two days after the prisoner was found in company with the prosecutor's wife (who was passing by the prisoner's name) on board a ship bound for Quebec. Property belonging the prosecutor, of a bulk greater than could have been comprised in the bundle taken by the wife, was found in the prisoner's cabin and upon his person:—Held, that there was some evidence to support a conviction for receiving the property, knowing it to have been stolen. Reg. v. Deer, L. & C. 240; 9 Cox, C. C. 225; 8 Jur., N. S. 1216; 32 L. J., M. Ć. 33; 11 W. R. 43; 7 L. T., N. S. 366.

On an indictment for feloniously receiving goods, knowing them to have been stolen, it is unsafe to convict a party as receiver on the evidence of the thief, unless it is confirmed. Reg. v. Robinson, 4 F. & F. 43—Pollock.

On an indictment for receiving goods, knowing them to have been stolen, the mere fact that they were found on the prisoner's premises is not sufficient to confirm the evidence of the thief, so far as to make it proper to convict. Reg. v. Pratt, 4 F. & F. 315—Pollock.

# 23. Punishment.

(24 & 25 Vict. c. 96, ss. 7, 8, 9, 98, 99.)

# 24. Restitution and Recovery of Stolen Property.

Restitution.]—By 24 & 25 Vict. c. 96, s. 100, "if any person guilty "of any such felony or misdemean-"or as is mentioned in the act, in "stealing, taking, obtaining, ex-

"torting, embezzling, converting "or disposing of, or in knowingly "receiving, any chattel, money, "valuable security, or other prop-"erty whatsoever, shall be indicted "for such offence, by or on the be-"half of the owner of the property, " or his executor or administrator, "aud convicted thereof, in such " case the property shall be restored " to the owner or his representative; "and in every case in this section "aforesaid, the court before whom "any person shall be tried for any "such felony or misdemeanor, shall "have power to award, from time " to time, writs of restitution for "the said property, or to order the "the restitution thereof in a sum-"mary manner: provided that if it "shall appear, before any award or " order made, that any valuable se-"curity shall have been bonâ fide "paid or discharged by some per-"son or body corporate liable to "the payment thereof, or being a " negotiable instrument, shall have "been bonâ fide taken or received "by transfer or delivery, by some "person or body corporate for a "just and valuable consideration, "without any notice, or without "any reasonable cause to suspect "that the same had by any felony " or misdemeanor been stolen, taken, " obtained, extorted, embezzled, con-"verted or disposed of, in such " case the court shall not award or " order the restitution of such secn-"rity; provided also, that nothing "in this section contained shall ap-"ply to the case of any prosecution " of any trustee, banker, merchant, "attorney, factor, broker, or other "agent intrusted with the posses-" sion of goods, or documents of ti-"tle to goods, for any misdemean-"or against this act." (Former provision, 7 & 8 Geo. 4, c. 29, s. 57.)

By 30 & 31 Vict. c. 35, s. 9, "where any prisoner shall be con"victed, either summarily or other"wise, of larceny or other offence

" which includes the stealing of any "property, and it shall appear to "the court by the evidence that the "prisoner has sold the stolen prop-"erty to any person, and that such " person has had no knowledge that "the same was stolen, and that any "monies have been taken from the " prisoner on his apprehension, it "shall be lawful for the court, on "the application of such purchaser, "and on the restoration of the stol-" en property to the prosecutor, to "order that out of such monies a "sum not exceeding the amount of "the proceeds of such sale be de-"livered to the purchaser."

7 & 8 Geo. 4, c. 29, repealed 4 Geo. 4, c. 11, except as to piracy, and 9 Geo. 4, c. 31, wholly repeals 1

Geo. 4, c. 115.

The 21 Hen. 8, c. 11, which restored goods to a prosecutor on conviction of the person who took them away, extended only to a felonious and not to a fraudulent taking. Rex v. De Veaux, 2 Leach, C. C. 585; 2 East, P. C. 789, 839.

Where a prisoner pleaded guilty to several indictments charging him with larceny, and an application was made on the part of the prosecutor for an order for restitution, the court consented to hear counsel on behalf of those who were in possession of the goods, and against whom the order, if made, would operate. Reg. v. Macklin, 5 Cox, C. 216—Alderson and Martin.

Where, under such circumstances, the depositions taken before the magistrate disclosed a clear case of felony, the court declined to order a writ of restitution to issue on the suggestion of the holders of the goods that the prisoner was an agent, and therefore that the fraudulent dealing with the goods on his part did not constitute a felony, but the court made the common order for restitution. *Ib.* 

The court cannot, under the 7 & 8 Geo. 4, c. 29, s. 57, order a Bank of England note which has been

paid and cancelled, to be delivered up to the prosecutor of an indictment against the party who stole it. Reav. Stanton, 7 C. & P. 431.

By 7 & 8 Geo. 4, c. 29, s. 57, the property in a stolen chattel revests in the owner on the conviction of the thief, and the owner may maintain trover for it, though there has been no order for restitution. Scattergood v. Sylvester, 15 Q. B. 506.

A. & B. were convicted of stealing the goods of C.; D., before they were convicted, acquired a title to the goods by making an advance of money bonâ fide, to A., who was the servant and agent of C., and had established his title to the goods in trover brought against him for their recovery by C.:-Held, that, notwithstanding the title had been acquired under 5 & 6 Vict. c. 39, by D., the goods on the conviction of A. and B. revested in C., and the court ordered them to be restored. Reg. v. Wollez, in re Hart, 8 Cox, C. C. 337—Kerr, Com., C. C. C.

The order not being obeyed, a rule was obtained calling upon D. to shew cause why he should not be attached for contempt, and a cross rule was obtained calling upon the prosecutor to shew cause why the order of restitution should not be rescinded; the court made the rule absolute for an attachment. Ib.

The court of Queen's Bench has at common law no jurisdiction to issue a writ of restitution except as part of the judgment on an appeal of larceny; and 21 Hen. 8, c. 11, and 24 & 25 Vict. c. 96, s. 100, only confer this jurisdiction on the court before whom the felon has been convicted. Where, therefore, a person has been convicted of housebreaking and larceny before the Central Criminal Court, the court of Queen's Bench has no power to award a writ of restitution of the proceeds of the larceny. Reg. v. London (Mayor, &c.), 4 L. R., Q. B. 371; 17 W. R. 722; S. C. nom. Walker v. London (Mayor, &c.), 11 |

Cox, C. C. 280; 20 L. T., N. S. 604; 38 L. J., M. C. 107.

Taking or advertising Rewards for return of Stolen Property. -By s. 101, "whosoever shall corruptly "take any money or reward, direct-"ly or indirectly, under pretence or "upon account of helping any per-"son to any chattel, money, valua-"ble security, or other property whatsoever, which shall, by any "felony or misdemeanor, have been "stolen, taken, obtained, extorted, "embezzled, converted or disposed " of, as in this act before mentioned, " shall (unless he shall have used all "dne diligence to cause the offender "to be brought to trial for the " same) be guilty of felony, and be-"ing convicted thereof shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "seven years and not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-"out hard labor, and with or with-" out solitary confinement; and, if a "male under the age of eighteen " years, with or without whipping." (Former provision, 7 & 8 Geo. 4, c. 29, s. 58. By 7 & 8 Geo. 4, c. 27, the 21 Hen. 8, c. 11, was wholly repealed.

It was an offence within 4 Geo. 1, c. 11, 's. 4, to take money under pretence of helping a man to goods stolen from him, though the prisoner had no acquaintance with the felon, and did not pretend that he had, and though he had no power to apprehend the felon, and though the goods were never restored, and the prisoner had not power to restore them. Rea v. Ledbitter, 1 M. C. C. 76.

By s. 102, "whosoever shall pub-"licly advertise a reward for the re-"turn of any property whatsoever, "which shall have been stolen or "lost, and shall in such advertise-"ment use any words purporting

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"shall make use of any words in "any public advertisement purport-"ing that a reward will be given or " paid for any property which shall "have been stolen or lost, without " seizing or making any inquiry after "the person producing such prop-"erty, or shall promise or offer in "any such public advertisement to "return to any pawnbroker or other " person who may have bought, or "advanced money by way of loan "upon, any property stolen or lost, "the money so paid or advanced, or "any other sum of money or reward " for the return of such property, or "shall print or publish any such " advertisement, shall forfeit the sum " of 501. for every such offence, to "any person who will sue for the "same by action of debt, to be re-"covered, with full costs of suit." (Similar to former provision, 7 & 8 Geo. 4, c. 29, s. 59.)

On an indictment against A., for corruptly and feloniously receiving from B. money under pretence of helping B. to recover goods before then stolen from B., and for not causing the thieves to be apprehended, three questions were left to the jury: First, did A. mean to screen the guilty parties, or to share the money with them? Second, did A. know the thieves, and intend to assist them in getting rid of the property, by promising B. to buy it? Third, did A. know the thieves, and assist B., as her agent, and at her request, in endeavouring to purchase the stolen property from them, not meaning to bring the thieves to justice? The jury answered the first question in the negative, and the third in the affirmative:—Held, that the receipt of the money under the circumstances was a corrupt receiving of the money by A. Reg. v. Pascoe, 4 New Sess. Cas. 66; 2 C. & K. 927; 1 Den. C. C. 456; T. & M. 141; 13 Jur. 544; 18 L. J., M. C. 186.

"that no questions will be asked, or XXI. MALICIOUS INJURY TO PROP-ERTY, CATTLE AND OTHER AN-IMALS.

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## 1. Houses or Buildings, by Tenants.

By 24 & 25 Viet. c. 97, s. 13, "whosoever, being possessed of any "dwelling-house or other building, "or part of any dwelling-house "or other building, held for any "term of years or other less term, "or at will, or held over after "the termination of any tenancy, "shall unlawfully and maliciously "pull down or demolish, or begin " to pull down or demolish, the same "or any part thereof, or shall un-" lawfully and maliciously pull down " or sever from the freehold any fix-"ture being fixed in or to such "dwelling-house or building, or part " of such dwelling-house or build-"ing, shall be guilty of a misde-" meanor."

# Manufactures and Materials.

By 24 & 25 Vict. c. 97, s. 14, "whosoever shall unlawfully and " maliciously cut, break, or destroy, " or damage with intent to destroy " or to render useless, any goods or "article of silk, woolen, linen, cot-"ton, hair, mohair, or alpaca, or of "any one or more of those materi-"als mixed with each other or "mixed with any other/material, "or any framework-knitted piece, | " stocking, hose, or lace, being in "the loom or frame, or on any ma-"chine or engine, or on the rack or "tenters, or in any stage, process, " or progress of manufacture, or "shall unlawfully and maliciously "cut, break, or destroy, or damage " with intent to destroy or to render " useless, any warp or shute of silk, "woolen, linen, cotton, hair, mo-"hair, or alpaca, or of any one or "more of those materials mixed " with each other or mixed with any " other material, or shall unlawfully "and maliciously cut, break, or de-"stroy, or damage with intent to "destroy or render useless, any "loom, frame, machine, engine, "rack, tackle, tool, or implement, "whether fixed or moveable, pre-" pared for or employed in carding, "spinning, throwing, weaving, full-"ing, shearing, or otherwise manu-"facturing or preparing any such "goods or articles, or shall by force "enter into any house, shop, build-"ing, or place, with intent to com-" mit any of the offences in this sec-"tion mentioned, shall be guilty of "felony, and being convicted there-" of shall be liable, at the discretion "of the court, to be kept in penal "servitude for life, or for any term "not less than five years (27 & 28 "Viet. c. 47), or to be imprisoned "for any term not exceeding two " years, with or without hard labour, "and with or without solitary con-"finement, and, if a male under the "age of sixteen years, with or with-"out whipping." (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 3.)

By 4 Geo. 4, c. 46, and 7 & 8 Geo. 4, c. 27, so much of 22 Geo. 3, c. 40, 28 Geo. 3, c. 55, and 4 Geo. 4, c. 46, relating to this subject, were repealed; and 24 & 25 Vict. c. 95, s. 1, repeals 7 & 8 Geo. 4, c. 30.

Goods remain in "a stage, process, or progress of manufacture," within 7 & 8 Geo. 4, c. 30, s. 3, though the texture is complete, if they are not yet brought into a con-

dition fit for sale. Rex v. Wood-head, 1 M. & Rob. 549—Coleridge.

An indictment on 7 & 8 Geo. 4, c. 30, s. 3, for feloniously damaging warps of linen yarn, with intent to destroy or render them useless, need not allege that the warps at the time of the damage done were prepared for or employed in carding, spinning, weaving, &c., or otherwise manufacturing or preparing any goods or articles of silk, woolen, linen, &c. Rex v. Ashton, 2 B. & Ad. 750.

A warp not sized, but on its way to the sizers to be sized to fit it for being used in manufacturing goods, is not a "warp in any stage, process or progress of manufacture," or prepared for or employed in carding, spinning, &c., within 7 & 8 Geo. 4, c. 30, s. 3, though the indictment is not bad for not averring it to be so. Reg. v. Clegg, 3 Cox, C. C. 295—Alderson.

The cords employed to raise the harness or the working tools of a loom, in order to move the shuttle to and fro, constitute tackle employed in weaving, and, therefore, cutting them was an offence within 7 & 8 Geo. 4, c. 30, s. 3. Reg. v. Smith, 6 Cox, C. C. 198—Williams.

Under this statute, the maliciously cutting such tackle is a complete offence, and it is unnecessary to aver or prove an intent to destroy or render it useless. *Ib*.

Quære, whether cutting the thrum, i. e., the ends of the woolen threads generally left in the machine when a piece of cloth is finished, for the purpose of more readily adjusting the succeeding work, is an offence within the statute? At all events, it does not support a count for maliciously cutting woolen warp; but the fact of cutting the thrum may be given in evidence in support of a count for cutting tackle, in order to shew the animus of the latter act, and that it was done maliciously. Ib.

The taking out and carrying away

the piece of iron called the half-jack, from a frame used for the making of frame-work knitted stockings, was a damaging the frame, within 28 Geo. 3, c. 55, s. 4, as it made the frame imperfect and inoperative, although the part taken out was not injured, and the replacing it would again make the frame perfect. Rex v. Tacey, R. & R. C. C. 452.

The cutting or destroying part of a loom was not within 22 Geo. 3, c. 40, s. 1, although the charge in the indictment was of an intent to cut and destroy certain tools employed in the woolen trade. Rex v. Hill,

R. & R. C. C. 483.

## 3. Machinery.

By 24 & 25 Viet. c. 97, s. 15, "whosever shall unlawfully and " maliciously cut, break, or destroy, " or damage with intent to destroy " or to render useless, any machine " or engine, whether fixed or move-"able, used or intended to be used sowing, reaping, mowing, "threshing, plowing, or draining, or "for performing any other agricul-"tural operation, or any machine or "engine, or any tool or implement, "whether fixed or moveable, pre-" pared for or employed in any man-"ufacture whatsoever (except the "manufacture of silk, woolen, linen, "cotton, hair, mohair, or alpaca "goods, or goods of any one or "more of those materials mixed " with each other or mixed with any " other material, or any framework-"knitted piece, stocking, hose, or "lace), shall be guilty of felony, " and, being convicted thereof, shall " be liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding " seven years, and not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-" out hard labour, and with or with-" out solitary confinement, and, if a "male under the age of sixteen "years, with or without whipping." |

(Former enactments, 7 & 8 Geo. 4, c. 30, s. 4, and 7 Will. 4 & 1 Viet. c. 90, s. 5.)

A person plugging up the feedpipe of a steam-engine, and displacing other parts of the engine in such a way as rendered it temporarily useless, and would have caused an explosion if the obstruction had not been discovered, and with some labour removed, is guily of damaging the engine, with intent to render it useless within 24 & 25 Viet. c. 97, s. 15. Reg. v. Fisher, 10 Cox, C. C. 146; 1 L. R., C. C. 7; 11 Jur., N. S. 983; 35 L. J., M. C. 57; 14 W. R. 58; 13 L. T., N. S. 380.

An indictment under 24 & 25 Vict. c. 97, s. 15, for damaging a machine, with intent to destroy the same, charging the offence to have been committed "unlawfully and maliciously," in the language of the statute, but omitting the word feloniously, is bad, as the word feloniously is a term of art and necessary in all indictments for felony, whether at common law or created by statute. Reg. v. Gray, 9 Cox, C. C. 417; L. & C. 365; 10 Jur., N. S. 160; 33 L. J., M. C. 78; 12 W. R. 350; 9 L. T., N. S. 733.

Ploughs of the description commonly used in agriculture are machines within the statute. *Ib*.

If a person has had a threshing-machine taken to pieces, he expecting a mob to come and destroy it, and the mob comes and destroys the different parts of the machine when thus separated, this was a felony within 7 & 8 Geo. 4, c. 30, s. 4. Rex v. Mackerel, 4 C. & P. 448—Park, Bolland and Patteson.

A. had a threshing-machine worked by water, the water-wheel having been put up for the sole purpose of working this machine, and never having been used for anything else; A., fearing the destruction of the machine by a mob, took it down, leaving the water-wheel standing. The prisoners broke the water-

wheel:—Held, to be a felony, under 7 & 8 Geo. 4, c. 30, s. 4; and the fact that A. sometimes worked the threshing-machine by horses made no difference. Rex v. Fidler, 4 C. & P. 449—Park, Bolland and Patteson.

On an indictment for breaking a threshing-machine, the judge allowed a witness to be asked whether the mob by whom the machine was broken did not compel persons to go with them, and then compel each person to give one blow to the machine; and also whether, at the time when the prisoner and himself were forced to join the mob, they did not agree together to run away from the mob the first opportunity, Rex v. Crutchley, 5 C. & P. 133—Patteson.

Where the prisoner was indicted for destroying a threshing-machine, and it appeared that it had been previously taken to pieces by the owner, by separating the arms and other parts of it, for the purpose of placing it in safety, but with a view to put it together again, and it was destroyed whilst in this disjointed state; it was decided that the offence was within 7 & 8 Geo. 4, c. 30, s. 4. Rex v. Hutchins, Deac. C. L. 1517—Park, Bolland and Patteson.

Where certain side boards were wanting to the machine at the time it was destroyed, but which did not render it so defective as to prevent it altogether from working, though it would not work so effectually as if those boards had been made good:

—Held, that it was still a threshingmachine within the meaning of the statute. Rex v. Bartlett, Deac. C. L. 1517—Vaughan, Parke and Alderson.

Where the owner removed a wooden stage belonging to the machine on which the man who fed the machine was accustomed to stand, and had also taken away the legs, and it appeared in evidence that though the machine could not

be conveniently worked without some stage for the man to stand on, yet that a chair or table, or a number of sheaves of corn, would do nearly as well, and that it could also be worked without the legs; it was held, that the machine was an entire one within the act, notwithstanding the stage and legs were wanting. Rex v. Chubb, Deac. C. L. 1518—Vaughan and Parke.

But where the prosecutor had not only taken the machine to pieces, but had broken the wheel of it, before the mob came to destroy it, for fear of having it set on fire and endangering his premises, and it was proved that without the wheel the engine could not be worked; in this case it was held, that the remaining parts of the machine, which were destroyed by the mob, did not constitute a threshing-machine within the meaning of the statute. Rex v. West, Deac. C. L. 1518—Alderson.

#### 4. Mines.

Setting Fire to.]—By 24 & 25 Vict. c. 97, s. 26, "whosoever shall "unlawfully and maliciously set fire "to any mine of coal, cannel coal, "anthracite, or other mineral fuel, "shall be guilty of felony, and be-"ing convicted thereof shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude for life, or for any term not "less than five years (27 & 28 Vict. "c. 47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment, and, if a male under the "age of sixteen years, with or with-"out whipping." (Former provision, 7 Will. 4 & 1 Viet. c. 89, s. 9.) By s. 27, "whosoever shall un-"lawfully and maliciously, by any "overt act, attempt to set fire to "any mine, under such circum-"stances that if the mine were "thereby set fire to, the offender "would be guilty of felony, shall

"be guilty of felony." (Former provision, 9 & 10 Viet. e. 25, s. 7.)

Attempting Drowning.]—By s. 28, "whosoever shall unlawfully and "malieiously eause any water to be "conveyed or run into any mine, or "into any subterraneous passage "eommunicating therewith, with in-"tent thereby to destroy or damage "such mine, or to hinder or delay "the working thereof, or shall with "the like intent unlawfully and "maliciously pull down, fill up, or "obstruct, or damage with intent "to destroy, obstruct, or render "useless, any air-way, water-way, "drain, pit, level, or shaft of or be-"longing to any mine, shall be "guilty of felony: provided that "this provision shall not extend to "any damage committed under-"ground by any owner of any ad-"joining mine in working the same, "or by any person duly employed "in such working." (Former provision, 7 & 8 Geo. 4, c. 30, s. 6.)

If A. and B. were the owners of adjoining mines, and A., asserting that a certain air way belonged to him, directed his workmen to stop it up, and they, acting bona fide, and believing that A. had a right to give such an order, do so, they were not guilty of felony within the 7 & 8 Geo. 4, c. 30, s. 6, for stopping up the air-way of a mine, even though A. knew that he had no right to the air-way; but if either of the workmen knew that the stopping up of the air-way was a malicious act of his master, such workmen would be guilty of the felony, Reg. v. James, 8 C. & P. 131-Abinger.

In an indictment under 7 & 8 Geo. 4, c. 30, s. 6, the mine might be laid as the property of the person in possession and working it, though only an agent for others. Reg. v. Jones, 2 M. C. C. 293; 1 C. & K. 181.

Damaging Engines for working.]

—By s. 29, "whosoever shall un-

" lawfully and maliciously pull down "or destroy, or damage with intent "to destroy or render useless, any "steam-engine or other engine for "sinking, draining, ventilating, or "working, or for in anywise assist-"ing in sinking, draining, ventilat-"ing, or working any mine, or any "appliance or apparatus in connex-"ion with any such steam or other "engine, or any staith, building, or "erection used in conducting the "business of any mine, or any "bridge, waggon-way, or trunk for "eonveying minerals from any mine, " whether such engine, staith, build-"ing, erection, bridge, waggon-way, "or trunk be completed or in an un-"finished state, or shall unlawfully "and malieiously stop, obstruct, or "hinder the working of any such "steam or other engine, or of any "such appliance or apparatus as "aforesaid, with intent thereby to "destroy or damage any mine, or "to hinder, obstruct, or delay the "working thereof, or shall unlaw-"fully and maliciously wholly or "partially out through, sever, break, "or unfasten, or damage with in-"tent to destroy or render useless, "any rope, chain, or tackle, of what-" soever material the same shall be "made, used in any mine, or in or "upon any inclined plane, railway, " or other way, or other work what-"soever, in anywise belonging or "appertaining to, or connected with, "or employed in any mine, or the "working or business thereof, shall "be guilty of felony." (Former enaetments, 7 & 8 Geo. 4, e. 30, s. 7, and 23 & 24 Vict. e. 29, s. 1.)

The bottom of the shaft of a mine had water in it, and the owner of the mine had eaused a scaffold to be erected at some distance above the bottom of the mine, for the purpose of working a vein of coal which was on a level with the scaffold:—Held, that this scaffold was an "erection used in the conducting the business of a mine," within 7 & 8 Geo. 4, c. 30, s. 7, and that the damaging it,

with intent to destroy it, or to render it useless, was felony. Reg. v. Whittingham, 9 C. & P. 234— Patteson.

A coal-mine was worked by a steam-engine, which caused a cylinder, called a drum, to revolve and take up the rope as the coal was drawn up from the mine:—Held, that proof of damaging the drum would not support an indietment which charged the damaging a steam-engine used in working a mine. Ib.

A steam-engine used in draining and working a mine had been stopped and locked up for the night. The prisoner got into the engine house, and set it going, and there being no machinery attached, the engine went with great velocity, and received damage:—Held, that this was a damaging of the engine, within 7 & 8 Geo. 4, e. 30, s. 7. Reg. v. Norris, 9 C. & P. 241-Gurney.

#### 5. Sea and River Banks.

By 24 & 25 Viet. c. 97, s. 30, "whosoever shall unlawfully and "maliciously break down, or cut "down, or otherwise damage or "destroy any sea bank or sea wall, "or the bank, dam, or wall of or be-"longing to any river, canal, drain, "reservoir, pool, or marsh, where-"by any land or building shall be, "or shall be in danger of being, "overflowed or damaged, or shall "unlawfully and maliciously throw, "break, or cut down, level, under-"mine, or otherwise destroy any "quay, wharf, jetty, lock, sluice, "floodgate, weir, tunnel, towing-"path, drain, watercourse, or other "work belonging to any port, har-"bour, dock, or reservoir, or on or "belonging to any navigable river "or eanal, shall be guilty of felony." (Former provision, 7 & 8 Geo. 4, e. 30, s. 12.)

By s. 31, "whosoever shall un-"lawfully and maliciously cut off, "draw up, or remove any piles, Viet. e. 97, s. 42, "whosoever shall

"chalk, or other materials fixed in "the ground, and used for securing "any sea bank, or sea wall, or the " bank, dam, or wall of any river, " canal, drain, aqueduct, marsh, re-" servoir, pool, port, harbour, dock, "quay, wharf, jetty, or lock, or "shall unlawfully and maliciously "open or draw up any floodgate or "sluice, or do any other injury or "mischief to any navigable river or "eanal, with intent and so as there. "by to obstruct or prevent the " earrying on, completing, or main-"taining the navigation thereof, "shall be guilty of felony." (Former provision, 7 & 8 Geo. 4, c. 30, s. 12.)

By a haven improvement act, any person who shall place on any space of ground immediately adjoining to the haven, and within the space of ten feet from high-water mark, any goods, materials, or artieles whatsoever, so as to obstruct the free and commodious passage through and over the same, shall forfeit and pay any sum not exceeding 51. B. placed three boats on the space of ground immediately adjoining the haven, and within the space of 10 feet from high-water mark, so as to obstruct the free and commodious passage to and over There was no public the same. right of passage over the space of ground, and it was occupied by B.: --Held, by Cockburn, C. J., Crompton, J., and Blackburn, J., that B. could not be convicted, as the provision could only apply to eases where a public right of passage existed; but by Wightman, J., that by the express terms of the act, and the apparent intention, the provision extended to such a case, and that B. was liable to be convicted. Harrod v. Worship, 30 L. J., M. C. 165—Q. B.

# Ships and Sea Signals.

Setting fire to, casting away, or destroying Ships.]-By 24 & 25 "unlawfully and maliciously set fire to, cast away, or in anywise de"stroy any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony." (Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 6.)

By s. 43, "whosoever shall un"lawfully and maliciously set fire
"to, or east away, or in anywise
"destroy any ship or vessel, with
"intent thereby to prejudice any
"owner or part owner of such ship
"or vessel, or of any goods on board
"the same, or any person that has
"underwritten or shall underwrite
"any policy of insurance upon such
"ship or vessel, or on the freight
"thereof, or upon any goods on
"board the same, shall be guilty of
"felony." (Former provision, 7
Will. 4 & 1 Vict. c. 89, s. 6.)

By s. 44, "whosoever shall un"lawfully and maliciously, by any
"overt act, attempt to set fire to,
"cast away, or destroy any ship or
"vessel, under such circumstances
"that, if the ship or vessel, were
"thereby set fire to, cast away, or
"destroyed, the offender would be
"guilty of felony, shall be guilty of
"felony."

By s. 45, "whosoever shall un"lawfully and maliciously place or
"throw iu, into, upon, against, or
"near any ship or vessel any gun"powder or other explosive sub"stance, with intent to destroy or
"damage any ship or vessel, or any
"machinery, working tools, goods,
"or chattels, shall, whether or not
"any explosion take place, and
"whether or not any injury be ef"fected, be guilty of felony."

By 12 Geo. 3, c. 24, "it is a cap-"ital offence to burn the queen's "ships of war."

It was an offence within 11 & 12 Will. 3, c. 7, s. 9, to make a revolt in a ship, or to endeavour to make one, though the object is not to run away with the ship, or to commit any act of piracy, but to force the captain to redress supposed griev-

ances. Rex v. Hastings, 1 M. C. C. 82.

If the crew, or part of the crew, of a ship combines together to resist the captain, especially if the object is to deprive him of his command, it will amount to making a revolt, within 11 & 12 Will. 3, c. 7, s. 9; and it will be no answer to shew that there were grievances, which, by their resistance, the men sought to redress. Reg. v. M'Gregor, 1 C. & K. 429—Abinger.

The destruction of a vessel by a part-owner shews an intent to prejudice the other part-owner, though he has insured the whole ship, and promised that the other part-owner should have the benefit thereof. Rex v. Philip, 1 M. C. C. 264.

On an indictment against a foreigner, who was ship's carpenter on board a foreign merchant ship, for conspiring in this country, with the foreign owner and master, to destroy or cast away the vessel, with intent to prejudice the owners of goods on board, or the insurers of the ship or cargo, it being admitted that the prisoner was party to the scuttling of the ship on the high seas, the jury was directed to consider whether the prisoner was a party in this country to a previous plan or conspiracy to destroy the ship, not limited to its destination on the high seas, the principal offence not being triable in this coun-Reg. v. Kohn, 4 F. & F. 68 -Willes,

If a ship was stranded, and afterwards got off in such a state as to be easily refitted, she could not be said to have been cast away or destroyed, under 4 Geo. 1, c. 12, and 11 Geo. 1, c. 29. Rew v. Delondo, 2 East, P. C. 1098.

A person might be tried under 7 Will. 4 & 1 Vict. c. 89, ss. 6, 11, as an accessory before the fact to the offence of setting fire to a vessel of which he was a part-owner. Reg. v. Wallace, Car. & M. 200—Tindal, Bosanquet and Williams.

An indictment was properly framed, which stated that the principal felon cast away and destroyed a vessel, and that the accessory incited, moved, aided, counselled, hired and commanded him to do it; and the accessory might be convicted on an indictment so framed, although the principal had not been tried, and did not appear to be amenable to justice. *Ib*.

The underwriters on a policy on goods fraudulently made were within 7 Will. 4 & 1 Vict. c. 89, s. 6, though no goods were put on board. Reg. v. Wallace, 2 M. C. C. 200.

Exhibiting False Signals, &c.]—By s. 47, "whosoever shall un"lawfully mask, alter, or remove
"any light or signal, or unlawfully
"exhibit any false light or signal,
"with intent to bring any ship,
"vessel, or boat into danger, or
"shall unlawfully and maliciously
"do anything tending to the im"mediate loss or destruction of any
"ship, vessel, or boat, and for
"which no punishment is herein"before provided, shall be guilty
"of felony." (Former provision,
7 Will. 4 & 1 Vict. c. 89, s. 5.)

Removing or concealing Buoys and other Sea Marks. - By s. 48, "whosoever shall unlawfully and "maliciously cut away, cast adrift, "remove, alter, deface, sink, or "destroy, or shall unlawfully and "maliciously do any act with in-"tent to cut away, cast adrift, "remove, alter, deface, sink, or "destroy, or shall in any manner "unlawfully and maliciously injure "or conceal any boat, buoy, buoy "rope, perch, or mark used or in-"tended for the guidance of sea-"men or the purpose of naviga-"tion, shall be guilty of felony."

Destroying Wreeks, or Articles "break down, or otherwise destroy of Ships in Distress.]—By s. 49, "the dam or floodgate of any mill "whosoever shall unlawfully and "pond, reservoir or pool, shall be "maliciously destroy any part of "guilty of a misdemeanor." (For-

"any ship or vessel which shall be "in distress, or wrecked, stranded, "or cast on shore, or any goods, "merchandise, or articles of any "kind belonging to such ship or "vessel, shall be guilty of felony." (Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 8.)

Damaging otherwise than by Fire.]—By s. 46, "whosoever "shall unlawfully and maliciously "damage, otherwise than by fire, "gunpowder, or other explosive "substance, any ship or vessel, "whether complete or in an un-"finished state, with intent to defusive the same, or render the "same useless, shall be guilty of "felony." (Former provision, 7 & 8 Geo. 4, c. 30, s. 10.)

An indictment on the latter statute for damaging a vessel need not have stated that the damage was done "otherwise than by fire," if it stated how it was done. Rex v. Bowyer, 4 C. & P. 559—Patteson.

# 7. Fish Ponds.

By 24 & 25 Viet. c. 97, s. 32, "whosoever shall unlawfully and "maliciously cut through, break "down, or otherwise destroy the "dam, floodgate, or sluice of any "fish pond, or of any water which "shall be private property, or in which there shall be any private "right of fishery, with intent there-"by to take or destroy any of the "fish in such pond or water, or so "as thereby to cause the loss or "destruction of any of the fish, or "shall unlawfully and maliciously "put any lime or other noxious "material in any such pond or "water, with intent thereby to "destroy any of the fish that may "then be or that may thereafter be "put therein, or shall unlawfully "and maliciously cut through, "break down, or otherwise destroy "the dam or floodgate of any mill " pond, reservoir or pool, shall be

mer provision, 7 & 8 Geo. 4, c. 30, |

The 7 & 8 Geo. 4, c. 27, repealed 5 Eliz. c. 29, and 4 Geo. 4, c. 54; and 24 & 25 Vict. c. 95, repeals 7

& 8 Geo. 4, c. 30, s. 15.

The breaking down the head or mound of a fish-pond was not a felony within 9 Geo. 1, c. 22, if it appeared to have been the object of the offenders to steal the fish, and not to let them escape through the breach in the mound. Rex v. Ross, R. & R. C. C. 10; 2 East, P. C. 1067.

## 8. Trees, Shrubs, Fences and Veyetables.

Statutes. \ \ 7 & 8 Geo. 4, c. 27, repealed 37 Hen. 8, c. 6; 43 Eliz. c. 7; 15 Car. 2, c. 2; 22 & 23 Car. 2, c. 7; 1 Geo. 1, c. 48; 6 Geo. 1, c. 16; 4 Geo. 3, c. 31; 6 Geo. 3, c. 48; 9 Geo. 3, c. 41, and 46 Geo. 3, c. 67; and 24 & 25 Vict. c. 95, repeals 7 & 8 Geo. 4, c. 30, and 7 Will. 4 & 1 Vict. c. 90, s. 5, and 7 Geo. 4, c. 27, repealed 9 Geo. 1, c. 22.

By 18 & 19 Vict. c. 126, s. 22, "the party aggrieved is a compe-"tent witness notwithstanding his " receipt of the money ordered to

" be paid for compensation."

Trees and Shrubs. —By 24 & 25 Vict. c. 97, s. 20, "whosoever "shall unlawfully and maliciously "cut, break, bark, root up or other-" wise destroy or damage the whole "or any part of any tree, sapling "or shrub, or any underwood, "growing in any park, pleasureground, garden, orchard or ave-"nue, or in any ground adjoining "or belonging to any dwelling-"house (in case the amount of in-"jury done shall exceed the sum "of 11.) shall be guilty of felony." (Former provision, 7 & 8 Geo. 4, c. 30, s. 19.)

By s. 21, "whosoever shall un-"lawfully and maliciously cut, |

" wise destroy or damage the "whole or any part of any tree, "sapling or shrub, or any under-"wood, growing elsewhere than in "any park, pleasure-ground, gar-"den, orchard or avenue, or in any "ground, adjoining to or belong-"ing to any dwelling-house (in "case the amount of injury done "shall exceed the sum of 5l.), "shall be guilty of felony." (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 19.)

Cutting down a tree was sufficient to bring a case within 9 Geo. 1, c. 22, although the tree was not thereby totally destroyed. Rex v.

Taylor, R. & R. C. C. 373.

Where shrubs are cut upon an unproved allegation that they were likely to be injurious to an adjoining wall, it is a malicious trespass, though the title to the spot on which the shrubs grew is in dispute between the parties. Rex v. Whateley, 4 M. & R. 431.

Apple and pear trees grafted in a wild stock, and producing fruit, were trees within 9 Geo. 1, c. 22. Rex v. Taylor, R. & R. C. C. 373.

A party might be convicted under the 7 & 8 Geo. 4, c. 30, s. 24, of having wilfully and maliciously damaged growing wood, to the value of sixpence, though section 20 expressly imposed a penalty for unlawfully and maliciously damaging such wood, "the injury done being to the amount of one shilling at least." Reg. v. Dodson, 9 A. & E. 704.

Indictment.]—In an indictment on 6 Geo. 3, c. 36, for destroying trees, the name of the owner of the trees must have been truly stated, otherwise it was fatal. Rex v. Patrick, 2 East, P. C. 1059. And see Rex v. Howe, 1 Leach, C. C. 481; 2 East, P. C. 588.

The prisoner was indicted for damaging apple trees growing in a garden, and the indictment alleged "break, bark, root up, or other- | that the damage was done feloniously and not unlawfully or maliciously:—Held, bad. Rexv. Lewis, 2 Russ. C. & M. 1066—Bosanquet.

Evidence of damage committed at several times in the aggregate, but not at any one time exceeding 51., will not sustain an indictment. Reg. v. Williams, 9 Cox, C. C. 338.

Amount of Damage. —By s. 22, "whosoever shall unlawfully and " maliciously cut, break, bark, root "up, or otherwise destroy or dam-"age the whole or any part of any " tree, sapling or shrub, or any un-"derwood, wheresoever the same " may be growing, the injury done " being to the amount of 1s. at the "least, shall, on conviction thereof "before a justice of the peace, at "the discretion of the justice, either "be committed to the common "gaol or house of correction, there "to be imprisoned only, or to be "imprisoned and kept to hard la-"bour for any term not exceeding "three months, or else shall forfeit "and pay, over and above the " amount of injury done, such sum " of money, not exceeding 51., as "to the justice shall seem meet; "and whosoever, having been con-" victed of any such offence, either " against this or any former act of "parliament, shall afterwards com-"mit any of the said offences in "this section before mentioned, and "shall be convicted thereof in like "manner, shall for such second of-"fence be committed to the com-"mon gaol or house of correction, "there to be kept to hard labour "for such term, not exceeding "twelve months, as the convicting "justice shall think fit; and who-"soever, having been twice con-" victed of any such offence (wheth-"er both or either of such convic-"tions shall have taken place be-"fore or after the passing of this "act), shall afterwards commit any " of the said offences in this section "before mentioned, shall be guilty |

"of a misdemeanor." (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 20.)

A person was indicted under 7 & 8 Geo. 4, c. 30, s. 19, for having feloniously, unlawfully and maliciously done damage to trees in a hedge, thereby doing injury to the owner to an amount exceeding 51. The evidence shewed that the actual injury done to the trees was to the amount of 11. only, but that it would be necessary to stub up the old hedge and replace it, the expense of which would be 41. 14s. The jury found him guilty:—Held, that the conviction was wrong, inasmuch as the injury exceeding 5l. must be actual injury to the trees, and that proof of consequential injury was insufficient. Reg. v. Whiteman, Dears. C. C. 353; 18 Jur. 434; 23 L. J., M. C. 120; 6 Cox, C. C. 370.

Vegetables in Gardens.]—By s. 23, "whosoever shall unlawfully "and maliciously destroy or dam-"age with intent to destroy, any "plant, root, fruit, or vegetable "production, growing in any gar-"den, orchard, nursery ground, "hothouse, greenbouse or conserva-"tory, shall, on conviction thereof "before a justice of the peace, at "the discretion of the justice, either " be committed to the common gaol "or house of correction, there to "be imprisoned only or to be im-" prisoned and kept to hard labour "for any term not exceeding six "months, or else shall forfeit and "pay over and above the amount " of injury done, such sum of mon-"ey, not exceeding 201., as to the "justice shall seem meet; and who-"soever, having been convicted of "any such offence, either against "this or any former act of parlia-"ment, shall afterwards commit "any of the said offences in this " section before mentioned, shall be "guilty of felony." (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 21.)

Elsewhere.]—By s. 24, "whoso-"ever shall unlawfully and ma-"liciously destroy, or damage with "intent to destroy, any cultivated "root or plant used for the food of " man or beast, or for medicine, or "for distilling, or for dyeing, or " for or in the course of any manu-"facture, and growing in any land, " open or inclosed, not being a gar-"den, orchard or nursery ground, "shall, on conviction thereof be-" fore a justice of the peace, at the " discretion of the justice, either be "committed to the common gaol " or house of correction, there to "be imprisoned only, or to be im-" prisoned and kept to hard labour "for any term not exceeding one "month, or else shall forfeit and " pay, over and above the amount " of the injury done, such sum of "money, not exceeding 20s., as to "the justice shall seem meet, and "in default of payment thereof, to-"gether with the costs, if ordered, "shall be committed as aforesaid "for any term not exceeding one "month, unless payment be sooner " made." (Previous enactment, 7

"& 8 Geo. 4, c. 30, s. 22.)
By s. 58, "malice against the "owners of the property injured is

"unnecessary."

Fences. - By 24 & 25 Vict. c. 97, s. 25, "whosoever shall unlaw-"fully and maliciously cut, break, "throw down or in anywise destroy " any fence of any description what-"soever, or any wall, stile or gate, "or any part thereof respectively, "shall, on conviction thereof be-"fore a justice of the peace, for "the first offence, forfeit and pay, "over and above the amount of "the injury done, such sum of mon-"ey, not exceeding 5l., as to the "justice shall seem meet." (For-"mer provision, 7 & 8 Geo. 4, c. " 30, s. 23.)

9. Hop-binds.

By 24 & 25 Vict. c. 97, s. 19,

"whosoever shall unlawfully and maliciously cut or otherwise destroy any hop-binds growing on poles in any plantation of hops shall be guilty of felony." (Former provision, 7 & 8 Geo. 4, c. 30, s. 18.)

In order to support an indictment under 7 & 8 Geo. 4, c. 30, s. 18, for destroying hop-binds, it must be shewn that the plant died in consequence of the injury received. Proof of the infliction of injury by cutting, bruising, &c., is insufficient. Reg. v. Boucher, 5 Jur. 709—Taddy, Serjt.

#### 10. Works of Art.

By 24 & 25 Vict. c. 97, s. 39, "whosoever shall unlawfully and "maliciously destroy or damage "any book, manuscript, picture, " print, statue, bust or vase, or any "other article or thing kept for the " purposes of art, science or litera-"ture, or as an object of curiosity, "in any museum, gallery, cabinet, "library or other repository, which " museum, gallery, cabinet, library " or other repository is either at all "times or from time to time open "for the admission of the public, " or of any considerable number of "persons, to view the same, either "by the permission of the proprie-"tor thereof or by the payment of "money before entering the same, " or any picture, statue, monument "or other memorial of the dead, "painted glass or other ornament "or work of art, in any church, "chapel, meeting - house or other "place of divine worship, or in "any building belonging to the "Queen, or to any county, riding, " division, city, borough, poor-law "union, parish or place, or to any "university, or college or hall of "any university, or to any inn of "court, or in any street, square, "church-yard, burial-ground, pub-"lie garden or ground, or any "statue or monument exposed to "public view, or any ornament,

" railing or fence, surrounding such "statue or monument, shall be "guilty of a misdemeanor." (Previous enactment, 8 & 9 Vict. c. 44, ss. 1, 4, and 17 & 18 Vict. c. 33,

#### 11. Indictment.

By 24 & 25 Vict. c. 97, s. 58, "every punishment and forfeiture "imposed by the act on any person "maliciously committing any of-"fence, whether the same be pun-"ishable upon indictment or upon "summary conviction, shall equally "apply and be enforced, wheth-"er the offence shall be committed " from malice conceived against the "owner of the property in respect " of which it shall be committed, or "otherwise."

By s. 59, "every provision of this act not hereinbefore so applied "shall apply to every person who, "with intent to injure or defraud "any other person, shall do any of "the acts hereinbefore made penal, "although the offender shall be in "possession of the property against "or in respect of which such act "shall be done."

By s. 60, "it shall be sufficient, "in any indictment for any offence "against this act, where it shall be "necessary to allege an intent to in-"jure or defraud, to allege that the " party accused did the act with in-"tent to injure or defraud, as the "case may be, without alleging an "intent to injure or defraud any "particular person; and on the trial "of any such offence it shall not be "necessary to prove an intent to in-"jure or defraud any particular per-"son, but it shall be sufficient to "prove that the party accused did "the act charged with an intent to "injure or defraud, as the case may " be."

# 12. Amount of Injury.

· By 24 & 25 Viet. c. 97, s. 51, "whosoever shall unlawfully and "maliciously commit any damage, "have the power of awarding com-

"injury or spoil to or upon any "real or personal property whatso-"ever, either of a public or private "nature, for which no punishment " is provided, the damage, injury or "spoil being to an amount exceed-"ing 51., shall be guilty of a misde-"meanor, and, being convicted "thereof, shall be liable, at the dis-" cretion of the court, to be impris-"oned for any term not exceeding "two years, with or without hard "labour; and in case any such of-"fence shall be committed between "the hours of nine of the clock in "the evening and six of the clock in "the morning, shall be liable, at the "discretion of the court, to be kept "in penal servitude for any term "not exceeding five years and not "less than three; or to be imprison-"ed for any term not exceeding two "years, with or without hard la-bour."

Under this provision, evidence of damage committed at several times, in the aggregate, but not at any one time exceeding 5l., will not sustain an indictment. Reg. v. Williams, 9 Cox, C. C. 338.

Upon an indictment for damaging trees and shrubs in a hedge to an amount exceeding 5l., a valuer proved that he estimated the injury to the trees at 1l., but that it would be necessary to stub up the old hedge, and that it would cost 5l. 14s. 6d. to replace it:—Held, that upon this evidence the indictment could not be sustained. Reg. v. Whiteman, 6 Cox, C. C. 370; 23 L. J., M. C. 120; Dears. C. C. 353; 23 L. J., M. C. 120.

Damage done to a field by a poacher's dog in pursuit of game, was not a malicious injury within 7 & 8 Geo. 4, c. 30, s. 23. Reg. v. Prestney, 3 Cox, C. C. 505—Parke.

#### Witnesses.

By 18 & 19 Vict. c. 126, s. 22, "in all cases of wilful or malicious "injuries to property, where justices

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"pensation to the party injured, his injured thereto is not to be affected by reason of his being a witness in proof of the offence."

# 14. Killing or Maining Cattle or other Animals.

Statute.]—By 24 & 25 Vict. c. 97, s. 40, "whosoever shall unlaw-"fully and maliciously kill, maim "or wound any cattle shall be guilty "of felony." (Former provision, 7

& 8 Geo. 4, c. 30, s. 16.)

By s. 41, "whosoever shall un-"lawfully and maliciously "maim or wound any dog, bird, "beast or other animal, not being "cattle, but being either the subject "of larceny at common law, or "being ordinarily kept in a state of " confinement, or for any domestic " purpose, shall, on conviction there-"of before a justice of the peace, at "the discretion of the justice, either " be committed to the common gaol " or house of correction, there to be "imprisoned only, or to be impris-"oned and kept to hard labour for "any term not exceeding six months, " or else shall forfeit and pay, over "and above the amount of injury "done, such sum of money, not ex-"ceeding 201., as to the justice shall "seem meet; and whosoever, hav-"ing been convicted of any such of-"fence, shall afterwards commit "any of the said offences in this sec-"tion before mentioned, and shall "be convicted thereof in like man-"ner, shall be committed to the "common gaol or house of correc-"tion, there to be kept to hard la-"bour for such term not exceeding "twelve months, as the convicting "justice shall think fit." (Former Provision, 7 & 8 Geo. 4, c. 30, s. 17.)

By s. 58, "malice against the owner of the cattle or other animal injured is unnecessary to be shewn."

The 7 Geo. 4, c. 27, repealed 37 Hen. 8, c. 6; 22 & 23 Car. 2, c. 7; 9 Geo. 1, c. 22 (the Black Act); and

4 Geo. 4, c. 54; and 24 & 25 Vict. c. 95, repeals 7 & 8 Geo. 4, c. 16 and 7 Will. 4 & 1 Vict. c. 90, s. 2.

Horses, mares and colts were included in the word "cattle" in 9 Geo. 1, c. 22. Rex v. Paty, 2 East, P. C. 1074; 1 Leach, C. C. 72; 2 W. Bl. 721; S. P., Rex v. Magle, 2 East, P. C. 1076.

So were geldings. Rex v. Mott, 2 East, P. C. 1075; 1 Leach, C.

C. 73, n.

Wounding a horse out of malice to the owner, by driving a nail into the frog of his hoof, was within 9 Geo. 1, c. 22, though the injury was only temporary. Rex v. Haywood, 2 East, P. C. 1076; R. & R. C. C. 16.

Pigs were cattle within 9 Geo. 1, c. 22. Rex v. Chapple, R. & R. C. C. 77.

So were asses. Rex v. Whitney, 1 M. C. C. 3.

Pouring acid into the eye of a mare, and thereby blinding her, was a maining. Rex v. Owens, 1 M. C. C. 205.

Injuring a sheep by setting a dog at it was not such a maiming or wounding as was within 4 Geo. 4, c. 54, s. 2. Rex v. Hughes, 2 C. & P. 420—Park. But see Elmsley's case, 2 Lewin, C. C. 126.

If A. set fire to a cow-house and burnt to death a cow which was in it, A. was indictable under 7 & 8 Geo. 4, c. 30, s. 16, for killing the cow. Reav. Haughton, 5 C. & P.

559—Taunton.

In order to constitute a maining of a horse within 7 & 8 Geo. 4, c. 30, s. 16, it was essential that a permanent injury should have been inflicted on the animal. Reg. v. Jeans, 1 C. & K. 539—Wightman.

On an indictment on 7 Will. 4 & 1 Vict. c. 90, s. 2, for maliciously wounding cattle, it was not necessary to prove that the prisoner was actuated by malice against the owner of the cattle. Reg. v. Tivey, 1 C. & K. 704; 1 Den. C. C. 63.

A conviction under 7 & 8 Geo. 4,

c. 30, s. 16, of unlawfully, maliciously and feloniously wounding a

mare, held right. Ib.

Upon an indictment under 24 & 25 Viet. c. 97, s. 40, for maliciously wounding a horse, it is not necessary to prove that any instrument was used to inflict the wound. Reg. v. Bullock, 1 L. R., C. C. 115; 37 L. J., M. C. 47; 17 L. T., N. S. 516; 16 W. R. 405; 11 Cox, C. C. 125.

Indictment. —On an indictment for maliciously killing two sheep, the property in them may be laid to be in the agister. Rex v. Woodward,

2 East, P. C. 653.

An indictment on 9 Geo. 1, c. 22, must have stated the species and sex of cattle wounded or injured; to state that the prisoner maimed certain eattle was not sufficient. v. Chalkley, R. & R. C. C. 258. (Form now 24 & 25 Vict. c. 97, s. 60.)

Evidence. - If a prisoner mixed poison with the corn intended for the feed of eight horses, and then gave each horse his feed from this mixture, an indictment charging that he did administer the poison to the eight horses, is correct. Rex v. Mogg, 4 C. & P. 364—Park.

On an indictment for administering sulphuric acid to eight horses, with intent to kill them, the prosecutor may give evidence of administering, at different times, to shew the intent; but if the jury is satisfied that the offender administered the poison under an idea that it would improve the appearance of the horses, he ought to be acquitted. *Ib.* 

#### XXII. MISDEMEANORS.

- 1. What Indictable in general, 323. 2. Attempt to commit, 324.
- 1. What Indictable in general. By 14 & 15 Vict. c. 100, s. 12, "if, upon the trial of any person for other fraudulent means, a young

"any misdemeanor, it shall appear "that the facts given in evidence "amount, in law, to a felony, such "person shall not by reason thereof "be entitled to be acquitted of such " misdemeanor, and no person tried "for such misdemeanor shall be li-"able to be afterwards prosecuted "for felony on the same facts, un-" less the court, before which such "trial may be had, shall think fit, "in its discretion, to discharge the "jury from giving any verdict "upon such trial, and to direct such "person to be indicted for felony, " in which case such person may be "dealt with in all respects as if he "had not been put upon his trial "for such misdemeanor."

Upon an indictment for a misdemeanor, it is no ground for an acquittal that the evidence necessary to prove the misdemeanor also shows it is part of a felony, and that the felony has been completed. Reg. v.

Button, 3 Cox, C. C. 229.

It is not indictable if an overseer, without fraud or menace, remove a pauper under an order, after it has been confirmed, on appeal, by the sessions, subject to the opinion of the Queen's Bench and before its final determination by that court. Reg. v. Cooper, 3 New Sess. Cas. 346; 18 L. J., M. C. 16—Q. B.

A parent, who has not the means of providing burial for the body of his deceased child, is not liable to be indicted for a misdemeanor in not providing for its burial, even though a nuisance is occasioned by allowing the body to remain unburied, and although the poor-law authorities of the union have offered him money to defray the expenses of burial, by way of loan, as he is not bound under such circumstances to contract a debt. Reg. v. Vann, 2 Den. C. C. 325; T. & M. 632; 15 Jur. 1090; 21 L. J., M. C. 39.

A conspiracy to procure by false pretences, false representations, and girl to have illicit carnal connexion with a man, is a misdemeanor at common law. Reg. v. Mears, T. & M. 414; 2 Den. C. C. 79; 15 Jur. 66; 20 L. J., M. C. 59. See 24 & 25 Vict. c. 95.

It is a misdemeanor to procure indecent prints with intent to publish them. *Dugdale* v. *Reg.* (in error), 1 El. & Bl. 435; Dears. C. C. 64; 17 Jur. 546; 22 L. J., M. C. 50.

But to preserve and keep them in possession with such intent is not. Ib.

Therefore, where some counts charged that the defendant obtained and procured indecent prints, in order and for the purpose of unlawfully publishing and selling them, and thereby corrupting the public morals, and other counts charged that the defendant unlawfully and knowingly preserved and kept in possession indecent prints, with the same intent:—Held, that the former counts were good, inasmuch as they charged an act done towards the commission of a misdemeanor; but that the latter counts were bad, inasmuch as they did not charge such an act. 16.

Uttering a false testimonial to character, knowing it to be forged, with intent to deceive, and thereby obtaining a situation of emolument, is a misdemeanor at common law. Reg. v. Sharman, Dears. C. C. 285: 18 Jur. 157; 23 L. J., M. C. 51.

### 2. Attempt to commit.

By 14 & 15 Vict. c. 100, s. 9, "whereas offenders often escape "conviction by reason that such "persons ought to have been charg-"ed with attempting to commit of- fences, and not with the actual commission thereof, for remedy thereof be it enacted, that if, on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury, upon the evidence, that the defendant did not complete the offence

"charged, but that he was guilty "only of an attempt to commit the "same, such person shall not by "reason thereof be entitled to be "acquitted, but the jury shall be "at liberty to return as their ver-"dict that the defendant is not "guilty of the felony or misdemean-" or charged, but is guilty of an at-"tempt to commit the same, and "thereupon such person shall be li-"able to be punished in the same "manner as if he had been con-"victed upon an indictment for at-"tempting to commit the particular "felony or misdemeanor charged in "the indictment; and no person so "tried as herein lastly mentioned "shall be liable to be afterwards " prosecuted for an attempt to com-"mit the felony or misdemeanor "for which he was so tried."

A. was indicted for breaking and entering a dwelling-house, and stealing certain specified goods. It appeared that, at the time of the breaking and entering, the goods named in the indictment were not in the house, but there were other goods there belonging to the pros-The jury found that he ecutor. was not guilty of the felony charged, but that he was guilty of breaking and entering the dwelling-house of the prosecutor, and attempting to steal his goods therein:—Held, that there was no attempt to commit the felony charged within the meaning of the above section, and therefore the verdict could not be sustained. Reg. v. M'Pherson, Dears. & B. C. C. 197; 3 Jur., N. S. 523; 26 L. J., M. C. 134.

The moment a man takes one necessary step towards the completion of a misdemeanor, he commits a misdemeanor. Reg. v. Chapman, 2 C. & K. 846; 1 Den. C. C. 432; T. & M. 90; 13 Jur. 885; 18 L. J., M. C. 152.

Every step towards a misdemeanor, by an act done, is punishable as a misdemeanor. *Ib*.

Any one act of fraud upon a pub-

lic officer, with intent to deceive, whereby a matter required by law for the accomplishment of an act of a public nature is illegally obtained, amounts to an indictable misdemeanor; and it need not be alleged or proved either that the act was in fact accomplished, or that the party, at the time of committing the fraud, intended that it should be.

A false oath taken before a surrogate, with intent to deceive such surrogate, and to obtain from him a license for a marriage, is punishable as a misdemeanor, although it is not alleged in the indictment, nor proved in evidence, that the marriage was in fact celebrated, and although the party found guilty was not the person about to be married. Ib.

Every attempt (not every intention, but every attempt) to commit a misdemeanor is a misdemean-Reg. v. Martin, 9 C. & P. 215—Patteson; S. P., Reg. v. Martin, 9 C. & P. 213; 2 M. C. C. 123.

An attempt to commit a misdemeanor is a misdemeanor, whether the offence was created by statute, or was an offence at common law. Rex v. Roderick, 7 C. & P. 795. -Parke; Rex v. Cartwright, R. R. C. C. 107—Le Blanc; Rex v. Butler, 6 C. & P. 368—Patteson.

An indictment which merely charges that the defendant did unattempt and lawfully endeavor fraudulently, falsely and unlawfully to obtain from A. a large sum of money with intent to cheat and defraud him, is bad in arrest of judgment. Reg. v. Marsh, 3 Cox, C. C. 571; 19 L. J., M. C. 12.

B. was indicted under 24 & 25 Vict. c. 96, s. 57, for having feloniously broken into and entered a shop, with the intent to commit a felony therein. It was proved that he made a hole in the roof, with intent to enter and steal, but was disturb-There was no evidence of his having in any way entered the building:—Held, that he was properly

convicted of a misdemeanor of attempting to commit a felony. Reg.v. Bain, L. & C. 129; 9 Cox, C. C. 98; 8 Jur., N. S. 418; 31 L. J., M. C. 88: 10 W. R. 236.

An attempt to commit a felony can only be made out where, if no interruption had taken place, the felony itself could have been effect-Reg. v. Collins, L. & C. 471; 9 Cox, C. C. 497; 10 Jur., N. S. 686; 33 L. J., M. C. 177; 12 W. R. 886; 10 L. T., N. S. 581.

#### XXIII. MURDER, MANSLAUGHTER, AND OFFENCES AGAINST THE Person.

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## 1. Murder.

Statute.]—By 24 & 25 Vict. c. 100, s. 1, "whosoever shall be con-"victed of murder shall suffer death" as a felon."

By s. 8, "every offence which, be"fore the commencement of 9 Geo.
"4, c. 31, would have amounted to
"petit treason, shall be deemed to
"be murder only, and no greater
"offence; and all persons guilty in
"respect thereof, whether as princi"pals or as accessories, shall be
"dealt with, indicted, tried and
"punished as principals and acces"sories in murder."

General Principles.]—Accidental homicide may be murder, if it happens in the prosecution of any illegal act; as in carrying away furniture to avoid distress for rent. Rex v. Hodgson, 1 Leach, C. C. 6; S. C. nom. Rex v. Hubson, 1 East, P. C. 258.

The killing a man on the highway is not justifiable homicide, unless there was an intention on the part of the person killed to rob or murder, or do some dreadful bodily injury to the person killing; or in other words, the conduct of the party must be such as to render it necessary on the part of the party killing to do the act in self-defence. Reg. v. Bull, 9 C. & P. 22—Vaughan and Williams.

In a case of death by stabbing, if the jury is of opinion that the wound was inflicted by the prisoner while smarting under a provocation, so recent and so strong that he may be considered as not being at the moment master of his own understanding, the offence will be manslaughter; but if there has been, after provocation, sufficient time for the blood to cool, for reason to resume its seat, before the mortal wound

was given, the offence will amount to murder; and if the prisoner displays thought, contrivance and design in the mode of possessing himself of the weapon, and in again replacing itimmediately after the blow was struck, such exercise of contrivance and design denotes rather the presence of judgment and reason than of violent and ungovernable passion. Rex v. Hayward, 6 C. & P. 157—Tindal.

It is no excuse for killing a man who was out at night dressed in white as a ghost, for the purpose of frightening the neighbourhood, that he could not otherwise be taken. Rex v. Smith, 1 Russ. C. & M. 749.

Where a wound is willfully, and without justifiable cause, inflicted, and ultimately becomes the cause of death, the party who inflicted it is guilty of murder, though life might have been preserved if the deceased had not refused to submit to a surgical operation. Red. v. Holland, 2 M. & Rob. 351—Maule.

The circumstance of a person having acted under an irresistible influence to the commission of homicide, is no defence, if at the time he committed the act he knew he was doing what was wrong. Reg. v. Haynes, 1 F. & F. 666—Bramwell.

An indictment stated that the prisoners gave, administered and delivered to A. large and excessive quantities of spirits and water, wine and porter, and induced, procured and persuaded him to drink them, being likely to cause death, which they well knew. The deceased was a man in possession under the sheriff, and one of the prisoners, of whose goods he was in possession, assisted by his brother and a friend, plied the man with liquor, themselves drinking freely also, and when he was very drunk put him into a cabriolet and caused him to be driven about the streets; and about two hours after he had been put into the cabriolet he was found dead: -Held, that, if it was essential to

prove that the prisoners knew that the liquors were likely to cause death, the case would be one of murder and not of manslaughter; but that such allegation was not a material part of the indictment, but might be dismissed from the jury's consideration. Reg. v. Packard, Car. & M. 236—Parke.

Held, also, that if the prisoners, when the deceased was drunk, put him into a cabriolet and drove him about in order to keep him out of possession, and by so doing accelerated his death, it would be manslaughter. Ib.

If a father sees a person in the act of committing an unnatural offence with his son, and instantly kills him, it seems that it would only be manslaughter, and that of the lowest degree; but if he only hears of it, and goes in search of the person, and meeting him, strikes him with a stick, and afterwards stabs him with a knife and kills him, in point of law it will be murder. Reg. v. Fisher, 8 C. & P. 182—Park, Parke and Recorder Law.

In a case of killing, whether the blood has had time to cool or not is a question for the court, and not for the jury; but it is for the jury to find what length of time elapsed between the provocation received and the act done. *Ib*.

Where it appears that one person's death is occasioned by the hand of another, it is for that other to shew, either by evidence or by inference from the circumstance of the case, that his offence is of a mitigated character, and does not amount to the crime of murder. Rex v. Greenacre, 8 C. & P. 35—Tindal, Coleridge, Coltman and Recorder Law.

Forcing a person to do an act which is likely to produce his death, and which does produce it, is murder. Rex v. Evans 1 Russ. C. & M. 676.

And threats may constitute such force. Ib.

If two persons fight, and one overpowers the other, and knocks him down, and puts a rope around his neck and strangles him, this will be murder. Rex v. Shaw, 6 C. & P. 372-Patteson.

If a person, being in possession of a deadly weapon, enters into a contest with another, intending at the same time to avail himself of it, and in the course of the contest actually uses it, and kills the other, it will be murder; but if he did not intend to use it when he began the contest, but used it in the heat of passion, in consequence of an attack made upon him, it will be manslaughter. If he uses it to protect his own life, or to protect himself from such serious bodily harm as would give him a reasonable apprehension that his life was in immediate danger, having no other means of defence, and no means of escape, and retreating as far as he can, it will be justifiable homicide. Reg. v. Smith, 8 C. & P. 160—Bosanquet, Bolland and Coltman.

A person cannot be indicted for murder in procuring another to be executed by falsely charging him with a crime of which he was innocent. Rex v. Macdaniel, 1 Leach, C. C. 44; 1 East, P. C. 333.

Even blows previously received will not extenuate homicide upon deliberate malice and revenge; especially where it is to be collected from the circumstances that the provocation was sought for the purpose of colouring the revenge. Rex v. Mason, 1 East, P. C. 239.

If a blow without provocation is wilfully inflicted, the law infers that it was done with malice aforethought, and if death ensues, the offender is guilty of murder, although the blow may have been given in a moment of passion. Reg. v. Noon, 6 Cox, C. C. 137—Cresswell.

As an assault, though illegal, will not reduce the crime of the party killing the person assaulting him to manslaughter, when the revenge is disproportionate and barbarous, much less will such personal restraint and coercion as one man may lawfully use towards another form any ground of extenuation. Reav. Willoughby, 1 East, P. C. 288.

If A. stands with an offensive weapon in the doorway of a room, wrongfully to prevent J. S. from leaving it, and others from entering, and C., who has a right in the room, struggles with him to get his weapon from him, upon which D., a comrade of A., stabs C., it will be murder in D. if C. dies. Rex v. Longden, R. & R. C. C. 228.

A father struck a fatal blow at the husband under the impulse of a strong resentment, caused by seeing his daughter violently assaulted by her husband, although not in a manner to endanger her life:—Held, that this might be a ground upon which the offence of murder might be reduced to that of manslaughter. Reg. v. Harrington, 10 Cox, C. C. 370—Cockburn.

An assault, too slight in itself to be a sufficient provocation to reduce murder to manslaughter, may become sufficient for that purpose when coupled with words of great insult. Reg. v. Smith, 4 F. & F. 1066—Byles.

By Parties acting together, and with a common Design.]—On an indictment of A. & B. for murder, it appeared that both followed the deceased out at night, and that A., who was the first to overtake him, threw him down a steep bank into a wet ditch, and then tried to rob him, and not being able, owing to his resistance, called to B., who then was ou the top of the bank, to come and help, which he did, and they both forcibly committed the robbery. It did not appear that there was any serious injury, except that caused by

the fall, and the deceased died three weeks afterwards of pneumonia, or inflammation of the lungs, which might either be caused by cold or violence:—Held, that though there was evidence against both for murder, there was not sufficient to convict, unless the jury was satisfied that there was a joint design to commit the violence, nor to convict either, unless satisfied that it caused the death. Reg. v. Lee, 4 F. & F. 63—Pollock.

Where two persons go out with the common object of robbing a third person, and one of them, in pursuit of that common object, does an act which causes the death of that third person, under such circumstances as to be murder in him who does the act, it is murder in the other also. *Reg.* v. *Jackson*, 7 Cox, C. C. 357—Martin.

The doctrine of constructive homicide, as regards offenders not actually present at, or parties to, an act of homicide, but sought to be made liable for it, by reason of their being engaged in a common purpose, in the course of carrying out which the act of homicide occurs, only applies (there being no evidence of a common intent to carry out the purpose at all hazards, and by all means), where the common purpose is felonious; not where it is merely unlawful, as in the case of a misdemeanor, such as nightpoaching. Reg. v. Skeet, 4 F. & F. 931—Pollock.

Therefore, where several men were engaged at night-poaching, and in a scuffle with a gamekeeper he was killed by a shot from the gun of one of them:—Held, that whether or not the gun was fired, there being no evidence to shew that the other prisoners were parties to the act of firing it, they were not guilty even of manslaughter; merely by reason of the act of homicide occurring in the course of poaching. *Ib*.

Held, that even although the gun

went off accidentally in the course of a scuffle with the keeper, he having a right to take the gun, it was manslaughter in the man who caused it. Ib.

In Self-defence.]—If a person is impressed who is not a proper object of impressment, or if the impressment is made without any legal warrant, it is lawful for the party to make resistance; and if the death of any of the parties concerned ensues, it is murder. Rex v. Dixon, 1 East, P. C. 313; R. & R. C. C. 53; S. P., Rex v. Rokeby, 1 East, P. C. 312.

If a person being attacked should, from an apprehension of immediate violence—an apprehension which must be well grounded and justified by the circumstances—throw himself for escape into a river, and be drowned, the person attacking him is guilty of murder. Reg. v. Pitts, Car. & M. 284—Erskine.

A person set to watch a yard or a garden is not justified in shooting any one who comes into it in the night, even if he should see the party go into his master's hen-roost; but if, from the conduct of the party, he has fair grounds for believing his own life in actual and immediate danger, he is justified in shooting him. Rex v. Scully, 1 C. & P. 319—Garrow.

By firing Buildings or Stacks.]—Where a person indicted for murder had wilfully set fire to a stack of straw, close to an out-house or a barn, in an inclosure not adjoining to a dwelling-house, and the deceased burned to death, either in the out-house or on or by the side of the stack:—Held, that he was not guilty of murder, unless the deceased was there when he set fire to the stack. Reg. v. Horsey, 3 F. & F. 287—Bramwell.

Child Murder.]—To justify a conviction on an indictment charging a

woman with the wilful murder of a child of which she was delivered, and which was born alive, the jury must be satisfied affirmatively that the whole body was brought alive into the world; and it is not sufficient that the child has breathed in the progress of the birth. Rew v. Poulton, 5 C. & P. 329—Littledale; S. P., Rew v. Enoch, 5 C. & P. 539—Parke.

If a child has been wholly produced from the body of its mother, and she wilfully and of malice aforethought, strangles it while it is alive and has an independent circulation, this is murder, although the child is still attached to its mother by the umbilical cord. Reg. v. Trilloe, Car. & M. 650; 2 M. C. C. 260.

A girl was indicted for the murder of her child, aged sixteen days. She was proceeding from Bristol to Llandogo, and was seen near Tintern, with the child in her arms, at 6 p.m.; she arrived at Llandogo between 8 and 9 p.m., without the The body of a child was afchild. terwards found in the river Wye, near Tintern, which appeared not to be the child of the prisoner:-Held, that she must be acquitted, and that she could not by law either be called upon to account for her child, or to say where it was, unless there was evidence to shew that her child was actually dead. Hopkins, 8 C. & P. 591—Abinger.

A prisoner was charged with the murder of her new-born child, by cutting off its head:—Held, that in order to justify a conviction for murder, the jury must be satisfied that the entire child was actually born into the world in a living state; and that the fact of its having breathed is not a decisive proof that it was born alive, as it may have breathed, and yet died before birth. Rex v. Sellis, 7 C. & P. 850—Coltman.

On a charge of child-murder, it appeared that the child must have

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circulation:-Held, that as the child had never had an independent circulation, the charge of murder could not be sustained. Reg. v. Wright, 9 C. & P. 754—Gurney.

An unskilful practitioner of midwifery wounded the head of a child before the child was perfectly born. The child was afterwards born alive, but subsequently died of this injury: -Held, manslaughter, although the child was in ventre sa mère at the time when the wound was given. Rex v. Senior, 1 M. C. C. 346: 1 Lewin, C. C. 183, n.

On the trial of an indictment against a woman for the manslaughter of her new-born child, the evidence went to prove that the child had dropped from her whilst she was on the privy, and that it had been smothered in the soil:— Held, that if the jury was of opinion that after it had been born the mother had the power of procuring such assistance as might have saved the child's life, and she neglected to procure it, she was guilty of manslaughter, Reg. v. Middleship, 5 Cox, C. C. 275—Erle.

Killing Wife caught in Adultery. —If a man finds his wife in the act of committing adultery, and kills her, this will be but manslaughter only; but if a man takes away the life of a woman, even his own wife, because he suspects, however strongly, that she has been engaged in some illicit intrigue, this will be murder. Reg. v. Kelly, 2 C. & K. 814 -Rolfe.

If a man kills his wife, or the adulterer, in the act of adultery, it is manslaughter and not murder. Pearson's case, 2 Lewin, C. C. 216-Parke.

By Poisoning. —On a trial for murder by poisoning, statements made by the deceased in a conversation shortly before the time at

died before it had an independent have been administered, are evidence to prove the state of his health at that time. Reg. v. Johnson, 2 C. & K. 354-Alderson.

On an indictment against a woman for the murder of her husband by arsenic, in September, evidence was tendered on behalf of the prosecution of arsenic having been taken by her two sons, one of whom died in December and the other in March subsequently, and also by a third son, who took arsenic in April following, but did not die. was given of a similarity of symptoms in the four cases. Evidence was also tendered that she lived in the same house with her husband and sons, and that she prepared their tea, cooked their victuals, and distributed them to the four parties: -Held, that this evidence was admissible for the purpose of proving, first, that the deceased husband actually died of arsenic; secondly, that his death was not accidental; and that it was not inadmissible by reason of its tendency to prove or create a suspicion of a subsequent fel-Reg. v. Geering, 18 L. J., M. ony. C. 215—Pollock.

On an indictment for the murder of A., evidence is not admissible that three others in the same family died of a similar poison, and that the prisoner was at all the deaths, and administered something to two of these patients. Reg. v. Winslow, 8 Cox, C. C. 397-Martin.

Upon the trial of a husband and wife for the murder of the mother of the former by administering arsenic to her, for the purpose of rebutting the inference that the arsenic had been taken by accident, evidence was admitted that the male prisoner's first wife had been poisoned nine months previously; that the woman who waited upon her, and occasionally tasted her food, shewed symptoms of having taken poison; that the food was always prepared by the female prisonwhich the poison is supposed to er; and that the two prisoners, the only other persons in the house, were not affected with any symptoms of poison. Reg. v. Garner, 4 F. & F. 346—Willes.

A., at the instigation of a woman who was pregnant by him, and influenced by her threats of self-destruction if the means of procuring abortion were not supplied to her, procured some corrosive sublimate, and handed it to the woman, who took it, and died from its effects. He was not present when the poison was taken by the woman. He was indicted for murder. The jury negatived the fact of his having administered the poison, or caused it to be taken by the woman, but said that he delivered it to her with the full knowledge of the purpose to which she intended to apply it:-Held, that he was not guilty of Reg. v. Fretwell, 9 Cox, murder. C. C. 152; 8 Jur., N. S. 466; 31 L. J., M. C. 145; 10 W. R. 545; 6 L. T., N. S. 333. But see now 24 & 25 Vict. c. 100, ss. 58, 59.

A prisoner was indicted for the murder of her infant child by poi-She purchased a bottle of laudanum, and directed the person who had the care of the child to give it a teaspoonful every night. That person did not do so, but put the bottle on the mantle-piece, where another little child found it, and gave part of the contents to the prisoner's child, who soon after died:—Held, that the administering of the laudanum by the child was as much, in point of law, an administering by the prisoner, as if she herself had actually administered it with her own hand. v. Michael, 9 C. & P. 356; 2 M. C. C. 120.

Killing Gamekeepers and Others.]

—If gamekeepers attempt to apprehend a gang of night poachers, and one of the gamekeepers is shot by one of the poachers, this will be murder in all the poachers, unless it can be proved that either of them

separated himself from the rest, so as to shew that he did not join in the act. Rex v. Edmeads, 3 C. & P. 390—Vaughan.

Where gamekeepers had secured two poachers, and they, having surrendered, called to a third, who came up and killed one of the gamekeepers, this is murder in all, though the two struck no blow, and though the gamekeepers had not announced in what capacity they had apprehended them. Rex v. Whithorne, 3 C. & P. 394—Vaughan.

Under 9 Geo. 4, c. 69, s. 2, a gamekeeper may apprehend poachers, though there are three or more, and found armed; for though s. 2 only authorises apprehending for what are offences under s. 1, and when there are three or more armed, they are punishable under s. 9; yet what is punishable under s. 9 is nevertheless an offence under s. 1, though the circumstances of aggravation make it liable to a greater punishment; and if the gamekeeper is killed in the attempt to apprehend, the offender will be guilty of murder, though the gamekeeper had previously struck the offender, or any of his party, if he struck in self-defence only, and to diminish the violence illegally used against him, and not vindictively to punish. Rex v. Ball, 1 M. C. C. 330.

If a gamekeeper attempting lawfully to apprehend a poacher, is met with violence, and in opposition to such violence and in self-defence strikes the poacher, and then is killed by the poacher, it will be murder. Rex v. Ball, 1 M. C. C. 333.

A servant of C. attempted to apprehend A., who was out night-poaching in a wood, and the servant was killed by A. C. was neither the owner nor the occupier of the wood, nor the lord of the manor, C. having only the permission of the owner of the wood to preserve game there:—Held, that this was manslaughter only in A. Rex v. Addis, 6 C. & P. 388—Patteson.

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More than nine men, of whom seven were armed with guns, being out at night in pursuit of game, were met, as they passed through a field from one wood to another, by a party of gamekeepers without firearms, but who at once assaulted them with sticks; and one of them with a dangerous weapon, a flail, likely to inflict a deadly injury, with which he struck one of the poachers, upon which another of them fired and killed him. grand jury was directed to throw out bills for murder against two of the men, one of whom was supposed to have fired the fatal shot, and the whole nine were indicted for manslaughter. There was evidence that they all stood in a row and cried "shoot":-Held, that whether or not the man who fired the shot could be identified, none of the prisoners would be guilty unless parties to the act of firing; and that though their heing in a row and crying out "shoot" was evidence that they were parties to the act, it was only evidence, and its effect would depend upon how far all the circumstances shewed that the firing was in pursuance of a common design to shoot, or only in consequence of a particular personal encounter. Reg. v. Luck, 3 F. & F. 483—Byles.

If the servant of the owner of property found a party actually committing an offence against 7 & 8 Geo. 4, c. 29, and apprehended him under s. 63, and, while taking the party to a magistrate, such party killed him, this will be murder; but if the servant either did not see him in the actual commission of the offence, or is taking him to any other place than before a magistrate, it will not be murder. Rex v. Curran, 3 C. & P. 397—Vaughan.

Killing Officers of Justice.]—In order to render the killing of an officer of justice, whether he is authorized in the right of his office, or by warrant, amount to murder upon

his interference in an affray, it is necessary that he should have given some notification of his being an officer, and of the intent with which he interfered. Rex v. Gordon, 1 East, P. C. 315, 352.

Killing an officer will amount to murder, though he had no warrant, and was not present when any felony was committed, but takes the party upon a charge only; and though such charge does not in terms specify all the particulars necessary to constitute the felony. Reavy. Ford, R. & R. C. C. 329.

Killing an officer who attempts to arrest a man will be murder, though the officer had no warrant, and though the man has done nothing for which he is liable to be arrested, if the officer has a charge against him for felony, and the man knows the individual to be an officer, though the officer does not notify him that he has such a charge. Rex v. Woolmer, 1 M. C. C. 334.

If a person is playing music in a public thoroughfare, and thereby collects together a crowd of people, a policeman is justified in desiring him to go on, and in laying his hand on him and slightly pushing him, if it is only done to give effect to his remonstrance; and if the person on so small a provocation strikes the policeman with a dangerous weapon and kills him, it will be murder; but otherwise, if the policeman gives him a blow and knocks him down. Reg. v. Hagan, 8 C. & P. 176—Bolland and Coltman.

If a police constable, on being sent for at a late hour of the night to clear a beer-house, does so, and one of the persons, on leaving the house, and being told to go away, refuses to do so, and uses threatening language, the constable is justified in laying hands on him to remove him; and if he cuts the constable with a knife, with intent to do grievous bodily harm, this is a capital offence, and the fact of the constable having laid hands on the

party would not have reduced the crime to manslaughter, if death had ensued. Rex v. Hems, 7 C. & P. 312 -Williams.

If a ship's sentinel shoots a man because he persists in approaching the ship when he has been ordered not to do so, it will be murder unless such an act was necessary for the ship's safety. Rex v. Thomas, 1 Russ. C. & M. 823.

A police officer found N. with potatoes under his shirt, which had been recently dug from the ground, and apprehended him. The policeman called O. to assist him; O. did so, and a rescue being attempted, O. was struck by A., who went away, and O. was afterwards killed by other persons, who attempted the rescue:-Held, that the police officer had no right to apprehend N., and that the killing of O., therefore, did not amount to murder, and that, on an indictment for murder, A. could not be convicted of an as-Reg. v. Phelps, Car. & M. 180; 2 M. C. C. 240.

K. and D. were arrested in Eng. land upon Irish warrants which were not backed in England, and which did not specify with what particular felony they were charged. They were brought before a magistrate and remanded. When being conveyed in a police-van through the streets of Manchester in the daytime, the now prisoners, armed with revolvers, attacked the van, the police-sergeant in charge of it was shot by one of the prisoners, and K. and D. escaped. Upon the trial of the prisoners for wilful murder, it was contended that the arrest of K. and D. being illegal by reason of the informality of the warrants, the offence committed amounted only to manslaughter:-Held, that in view of the facts that K. and D. had been for some time in custody, that the informality of the warrants was unknown to the prisoners, and that they deliberately, and with premeditations devised Microsperson cannot be tried for in-

and carried out the attack which resulted in the death of the policesergeant, the offence was murder and not manslaughter. Reg. v.Allen, 17 L. T., N. S. 222-Blackburn and Mellor.

A police-officer is protected if he acts upon a warrant, even though that warrant is informal; and if he is killed when so acting by a premeditated attack, with a view to a rescue, the crime will be murder; the proper course being to apply to a court of law for a habeas corpus to have the prisoner discharged from custody. Ib.

The defendant was arrested for misdemeanor; he resisted the apprehension and killed the officer:-Held, that it was not murder, the officer not having the warrant for his arrest at the time the arrest was Reg. v. Chapman, 12 Cox,  $\mathbf{made}$ . C. C. 4.

An attempt to arrest for misdemeanor under a warrant is not lawful, when the officer at the time of the arrest cannot produce the warrant. Ib.

Suicides. —He who kills another upon his desire or command, is, in the judgment of the law, as much a murderer as if he had done it merely of his own head. Rex v. Sawyer, 1 Russ. C. & M. 670.

If a man encourages another to murder himself, and is present abetting him while he does so, such person is guilty of murder as principal. Rex v. Dyson, R. & R. C. C. 523.

If two encourage each other to murder themselves together, and one does so, but the other fails in the attempt upon himself, he is a principal in the murder of the other.

But if it is uncertain whether the deceased really killed himself, or whether he came to his death by accident before the moment when he meant to destroy himself, it will not be murder in either.

citing another to commit suicide, although that other commits suicide. Reg. v. Leddington, 9 C. & P. 79—Alderson.

If two persons mutually agree to commit suicide together, and the means employed to produce death only take effect on one, the survivor will, in point of law, be guilty of the murder of the one who died. Reg. v. Alison, 8 C. & P. 418—Patteson.

If a woman takes poison with intent to procure a miscarriage, and dies of it, she is guilty of self-murder, whether she was quick with child or not; and a person who furnished her with the poison for that purpose, will, if absent when she took it, be an accessory before the fact only. Rex v. Russell, 1 M. C. C. 356.

An attempt to commit suicide is not an attempt to commit murder within 24 & 25 Vict. c. 100, and is not merged in any of the felonious attempts to commit murder made punishable by that act, but remains a misdemeanor at common law triable by the court of quarter sessions. Reg. v. Burgess, L. & C. 258; 9 Cox, C. C. 247; 32 L. J., M. C. 55; 11 W. R. 96; 7 L. T., N. S. 472.

In Duelling. —When, upon a previous agreement, and after there has been time for the blood to cool, two persons meet with deadly weapons, and one of them is killed, the party who occasions the death is guilty of murder, and the seconds also are equally guilty; and with respect to others shewn to be present, the question is, did they give their aid and assistance by their countenance and encouragement of the principals in the contest? Mere presence will not be sufficient; but if they sustain the principals, either by advice or assistance, or go to the ground for the purpose of encouraging and forwarding the unlawful conflict, although they do not say or do any-!

thing, yet, if they are present assisting and encouraging by their presence at the moment when the fatal shot is fired, they are, in law, guilty of the crime of murder. Reg. v. Young, 8 C. & P. 644—Vaughan and Alderson.

If A. has formed a deliberate design to kill B., and after this they meet and have a quarrel, and many blows pass, and A. kills B., this will be murder, if the jury is of opinion that the death was in consequence of previous malice, and not of the sudden provocation. Reg. v. Kirkham, 8 C. & P. 115—Coleridge.

The defendant was indicted for The evidence was, the murder. deceased struck the defendant, a reconciliation took place; the defendant going to his home, suddenly stops, and by his remarks seems to invite a renewal of the aggression; the deceased, accepting it as a challenge, went after the prisoner, who stabbed him. If the reconciliation was feigned, and the renewal was for the purpose of using a deadly weapon, there is evidence of implied malice to sustain the charge of murder. Reg. v. Selten, 11 Cox. C. C. 674.

Where two persons go out to fight a deliberate duel, and death ensues, all persons who are present, encouraging and promoting that death, will be guilty of murder. And the person who acted as the second of the deceased person in such a duel may be convicted of murder, on an indictment charging him with being present, aiding and abetting the person by whose act the death of his principal was occasioned. Reg. v. Cuddy, 1 C. & K. 210—Williams and Rolfe.

## 2. Manslaughter.

Statute.]—By 24 & 25 Vict. c. 100, s. 7, "no punishment or for-"feiture shall be incurred by any person who shall kill another by "misfortune, or in his own defence, " or in any other manner without | "felony."

By 9 Geo. 4, c. 31, the 1 Jac. 1, c. 8, and 3 Geo. 4, c. 38, were repealed, and 24 & 25 Vict. c. 95, s. 1, repeals 9 Geo. 4, c. 31.

What is Manslaughter. ]—See L. C. J. Tindal's charge, 5 C. & P. 261, n.

Manslaughter is homicide, not under the influence of malice. Rex v. Taylor, 2 Lewin, C. C. 217—Taunton.

If persons cover another with straw and set fire to it, intending to do him a serious injury, and he dies, it is murder, though they did not intend to kill him. But if they intended the act in sport, and merely to frighten him, it is manslaughter. Errington's case, 2 Lewin, C. C. 217 —Patteson.

By the Commission of Negligent or unlawful Acts.]—That which constitutes murder when by design, and of malice prepense, constitutes manslaughter, when arising from culpable negligence. Reg. v. Hughes, Dears. & B. C. C. 248; 7 Cox, C. C. 301; 3 Jur., N. S. 696; 26 L. J., M. C. 202.

The deceased was with others employed in walling the inside of a It was the duty of the prisshaft. oner to place a stage over the mouth of the shaft, and the death of the deceased was occasioned by the negligent omission on his part to perform such duty. He was convicted of manslaughter:—Held, that the conviction was right. 16.

Although it is manslaughter where the death was the result of the joint negligence of the prisoner and others; yet it must have been the direct result, wholly or in part, of the prisoner's negligence, and his neglect must have been wholly or in part the proximate and efficient cause of the death, and it is not so where the negligence of some other person has intervened between his act or omission and the fatal result. gave it to his wife, intending her to

Reg. v. Ledger, 2 F. & F. 857— Erle.

A party causing the death of a child, by giving it spirituous liquors in a quantity quite unfit for its tender age, is guilty of manslaughter. Rex v. Martin, 3 C. & P. 211— Vaughan.

A husband seized his wife, a heavy, corpulent woman, and dashed her violently on the brick floor of a kitchen, and then struck her with the tongs on her thigh, inflicting a severe bruise, but no injury in itself fatal. She languished ten days, during which she, at his desire, and in effect driven away by him, sought shelter at a friend's, where, at the end of that time, she died; he providing no medical aid, and no doctor visiting her until the day before her death, when it was too late. The medical evidence shewed that she was diseased, but that she might have lived for an indefinite period; and that the effect of the whole of the violence was to hasten her death, by a shock to the nervous system calculated to aggravate the disease:—Held, that if this was so he was guilty of man-Reg. v. Murton, 3 F. & slaughter. F. 492—Byles.

If two or more persons go out together with a purpose to commit a breach of the peace, and, in the course of the accomplishment of that common design, one of them kills a man, the other also is guilty of manslaughter. Reg. v. Harrington. 5 Cox, C. C. 231.

Wherever death ensues from injuries inflicted by parties engaged in any illegal act, an indictment for manslaughter will lie, even though it appears that the deceased had materially contributed to his death by his own negligence. Reg. v. Longbottom, 3 Cox, C. C. 439 — Rolfe.

The prisoner was convicted of manslaughter. It appeared that he procured sulphate of potash, and take it for the purpose of procuring abortion, and that she, believing herself to be pregnant, although in reality she was not, took the sulphate of potash, in his absence, and died from its effects:—Held, that the conviction was right. Reg. v. Gaylor, Dears. & B. C. C. 288; 7 Cox, C. C. 253.

If it is the duty of a person, as a ground bailiff of a mine, to cause the mine to be properly ventilated by causing air-headings to be put up where necessary, and by reason of his omission in this respect another is killed by an explosion of firedamp, such person is guilty of manslaughter, if by such his omission he was guilty of a want of ordinary and reasonable precaution; and if it was his plain and ordinary duty to have caused an air-heading to have been made, and a man using reasonable diligence would have done it. Reg. v. Haines, 2 C. & K. 368 — Maule.

It is no defence in a case of manslaughter that the death of the deceased was caused by the negligence of others as well as by that of the prisoner; for if the death of the deceased is caused partly by the negligence of the prisoner and partly by the negligence of others, the prisoner and all those others are guilty of manslaughter. Ib.

Trustees appointed under a local act for the purpose of repairing roads in a district, with power to contract for executing such repairs, are not chargeable with manslaughter if a person using one of such roads is accidentally killed in consequence of the roads being out of repair through neglect of the trustees to contract for repairing it. Reg. v. Pocock, 17 Q. B. 34; 5 Cox, C. C.

A woman who knows she is to be confined, and who wilfully abstains from taking the necessary precantions to preserve the life of the child after its birth, in consequence of

which the child dies, is not guilty of manslaughter. Reg. v. Knights, 2 F. & F. 46—Cockburn.

Generally, it may be laid down, that, where one by his negligence has contributed to the death of another, he is guilty of manslaughter. Reg. v. Swindall, 2 C. & K. 230—Pollock.

Where a man and his wife are living apart by mutual consent, he granting her a fixed allowance, which is regularly paid, he is not prima facie bound to supply her with shelter; but if he is made acquainted with the fact that she is without shelter, and refuses to provide her with it, in consequence of which her death ensues, semble, that he is guilty of manslaughter. Reg. v. Plummer, 1 C. & K. 600; 8 Jur. 921—Gurney.

An iron-founder being employed by an oilman and a dealer in marine stores to make some cannon, to be used on a day of rejoicing, and afterwards to be put into a sailing-boat; after one of them had burst, and been returned to him in consequence, sent it back in so imperfect a state, that on being fired it burst again, and killed a third person:—Held, that the maker was guilty of manslaughter. Rex v. Carr, 8 C. & P. 163, n.—Bayley, Patteson and Gurney.

B. was a person who made fireworks, contrary to 9 & 10 Will. 3, c. He kept a quantity of combustibles at his house, for the purpose of his business, as a maker of fireworks; and during his absence, through the negligence of his servants, a fire broke out amongst such combustibles, and a rocket becoming thereby ignited flew across a street, setting fire to a house opposite, caused the death of a person therein:—Held, that a conviction of manslaughter was wrong, as the death was not occasioned by the unlawful act of B., but by the negligence of his servants. Reg. v. Bennett, Bell, C.

C. 1; 4 Jur., N. S. 1088; 28 L. J., M. C. 27; 7 W. R. 40; 32 L. T. 110; 8 Cox, C. C. 74.

On an indictment for manslaughter by causing a fire, it is necessary, in order to sustain the case by an exhaustive process of proof, to shew that the fire could not have arisen from any other cause than that charged; it is necessary to leave no considerable interval of time in which some other cause might have Reg. v. Gardner, 1 F. & acted. F. 669—Bramwell.

Where A., having a right to the possession of a gun which was in the hands of the deceased, and which he knew to be loaded, attempted to take it away by force, and in the struggle which ensued the gun went off accidentally and caused the death of the deceased:— Held, that as the death was caused by the discharge of the gun, which was the result of the unlawful act of A., he was guilty of manslaughter. Reg. v. Archer, 1 F. & F. 351 — Campbell.

Where a butcher employed the deceased, a shepherd boy, to tend some sheep which were penned, and negligently suffered some of them to escape through the hurdles; and the butcher, upon seeing it, ran towards the boy, and, taking up a stake, which was lying on the ground, threw it at him, and inflicted an injury of which he died:-Held, that under the circumstances it was a question for the jury whether it was murder or manslaughter; they found the latter. Rex v. Wiggs, 1 Leach, C. C. 379,

A kick is not a justifiable mode of turning a man out of your house, though he is a trespasser; therefore, if it causes death it is manslaughter. Wild's case, 2 Lewin, C. C. 214—Alderson.

A man is not criminally responsible for the death of another party caused by his negligence, where he

in an action at the suit of the party injured, if the injuries sustained had fallen short of causing his death. Reg. v. Birchall, 4 F. & F. 1087—Witles.

The private servant of the owner of a tramway crossing a public road was entrusted to watch it: while he was absent from his duty an accident happened, and a person was The private act did not rekilled. quire the owner to watch the tramway:—Held, that there was no duty between the owner and the public, and, therefore, his servant was not guilty of negligence, so as to make him guilty of manslaughter. Reg. v. Smith, 11 Cox, C. C. 210—Lush.

A person was indicted for man-The evidence was that slaughter. he struck the deceased twice with a heavy stick, that he afterwards left him asleep by the side of a small fire in a country lane during the whole of a frosty night in the month of January, and the next morning, finding him just alive, put him under some straw in a barn, where his body was found some months after-The jury was directed that wards. if death resulted from the beating or from the exposure during the night in question, such exposure being the result of criminal negligence, or from the prisoner leaving the boy under the straw ill, but not dead, the prisoner was guilty of manslaughter. Reg. v. Martin. 11 Cox, C. C. 136—Byles.

If after a reconciliation, the aggressor renews the contest, or attempts to do so, and the other having a deadly weapon about him, on such sudden renewal of the provocation, uses it without previous intent to do so, there is evidence which may reduce the crime to manslaughter. Reg. v. Selten, 11 Cox, C. C. 674.

Unintentional Acts.] — Where a mother, being angry with one of her children, took up a small piece of would not have been civilly liable iron used as a poker, and on his

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running to the door of the room, which was open, threw it after him, and hit another child who happened to be entering the room at the moment, in consequence of which he died:—Held, to be manslaughter, although it appeared the mother had no intention of hitting the child with whom she was angry, and only intended to frighten him. •Rex v. Conner, 7 C. & P. 438—Parke & Gaselee.

A lad, as a frolic, without any intention to do any harm to any one, took the trap-stick out of the front part of a cart, in consequence of which it was upset, and the carman who was in it, putting in a sack of potatoes, was pitched backwards on the stones and killed: Held, that the lad was guilty of manslaughter. Rex v. Sullivan, 7 C. & P. 641—Gurney and Williams.

A drunken man went into a shop, and in a joke seized a boy round the neck, and began spinning him round until they got together into The boy having at the street. length broken away, the prisoner, in consequence, staggered into the road and fell against a woman who was passing, knocked her down: she shortly after died of the injuries which she had received. boy made no resistance to the prisoner's treatment of him, believing that it was merely done in play:-Held, that there was no evidence of manslaughter. Reg. v. Bruce, 2 Cox, C. C. 262.

In course of Scuffles and Altercations.]—The killing a person in an affray, by another who was in a violent heat and passion at the time, will not amount to murder, but manslaughter. Rev v. Rankin, R. & R. C. C. 43.

If, on a sudden quarrel between two parties of keelmen and soldiers, a blow intended for an individual of one party would, if death ensued, have amounted only to man-

slaughter; it will be manslaughter though by accident it kills another. Rex v. Brown, 1 Leach, C. C. 148; 1 East, P. C. 231, 245, 274.

If, on any sudden quarrel, blows pass without any intention to kill or injure any one materially, and in the course of the scuffle, after the parties are heated by the contest, one kills the other with a deadly weapon, it is only manslaughter. Rex v. Snow, 1 Leach, C. C. 151; 1 East, 244. And see Rex v. Taylor, 5 Burr. 2793.

If a person receives a blow, and immediately avenges it with any instrument he may happen to have in his hand, and death ensues, this will be only manslaughter, provided the fatal blow is to be attributed to the passion of anger arising from the previous provocation. Rew v. Thomas, 7 C. & P. 817—Parke.

It is not every slight provocation, even by a blow, which will, when the party receiving it strikes with a deadly weapon and death ensues, reduce the crime from murder to manslaughter. Rex v. Lynch, 5 C. & P. 324.

The prisoner having, after a trifling and casual altercation, sustained several blows from the deceased (a stranger to him), instantly stabbed him with a clasp knife he had about him:—Held, that it was for the jury, whether or not the blow was struck in the heat of sudden passion, without previous malice, so as to reduce the offence to manslaughter. Reg. v. Eagle, 2 F. & F. 827—Erle.

Where one having had his pocket picked, seized the offender, and, being encouraged by a concourse of people, threw him into an adjoining pond by way of avenging the theft by ducking him, but without any apparent intention of taking away his life, and the pickpocket was drowned: — Held, that it only amounted to manslaughter. Reav v. Fray, 1 East, P. C. 236.

When two or more, one of

whom has received the provocation of a blow, are charged with murder, and one of them has received a provocation, (as a blow) which would reduce homicide to manslaughter, and it cannot be proyed which of them inflicted the fatal blow, neither of them can be convicted of murder, without a proof of a common design to inflict the homicidal act; nor of manslaughter, without proof of a common design to inflict unlawful vio-Reg. v. Turner, 4 F. & F. lence. 339—Channell.

In course of Fighting.] — All persons who even by their presence encourage a fight, from which death ensues to one of the combatants, although they neither say nor do anything, are guilty of manslaugh-But if the death is caused, not by blows given in the fight itself, but by other parties breaking the ring and striking the deceased with bludgeons, the persons who merely encouraged the fight by their presence are not answerable. Rex v. Murphy, 6 C. & P. 103 —Littledale and Bolland.

A. was fighting with his brother; and, to prevent this, B. laid hold of A., and held him down upon a locker on board the barge in which they were, but struck no blow. stabbed B.:—Held, that if B. did nothing more than was sufficient to prevent A. from beating his brother, and had died of this stab, the offence of A. would have been murder; but that if B. did more than was necessary to prevent the beating of A.'s brother, it would have been manslaughter only. Rex v. Bourne, 5 C. & P. 120—Gaselee and Parke.

If, after an interchange of blows on equal terms, one of the parties, on a sudden and without any such intention at the commencement of the affray, snatches up a deadly weapon and kills the other party public one, and open to all her with it, such killing will only Majesty's subjects. The artillery-

amount to manslaughter. Rex v. Anderson, 1 Russ. C. & M. 731—

Bayley.

But if a party, under colour of fighting upon equal terms, uses from the beginning of the contest a deadly weapon without the knowledge of the other party, whom he kills with such weapon; or if at the beginning of the contest he prepares a deadly weapon, so as to have the power of using it in some part of the contest, and accordingly does so and kills the other party; the killing in both these cases will be murder. Rex v. Whiteley, 1 Lewin, C. C. 173—Bayley.

Where there had been mutual blows, and then, upon one of the parties being pushed down on the ground, the other stamped upon his stomach and belly with great force, and thereby killed him, it was considered only to be manslaughter. Rex v. Ayes, R. & R. C. C. 166. But in Rex v. Thorpe, 1 Lewin, C. C., 171, Bayley, J., intimated that death caused by up-and-down-fight-

ing would be murder.

If two persons quarrel and begin to fight on equal terms, where one, finding himself not equal to his adversary, runs away, and being pursued, draws his knife, and, when overtaken by his adversary, stabs him; if death ensues, this would be only manslaughter; but if, before the conflict began, the party had drawn his knife in cool blood, in case death had ensued, the offence would have been murder. Rex v. Kessal, 1 C. & P. 437 —Park.

By Soldiers in the Exercise of their Profession. ] — A gun discharged in the ordinary and regular course of ball practice by an artilleryman in a garrison town, missed the mark, and killed a man who was lawfully passing near the spot in a boat, the place being a public one, and open to all her

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man who fired the gun was acting under the command of a superior officer, who was acting in obedience to the general orders of the major-general: - Held, that the major-general was not guilty of manslaughter. Reg. v. Hutchinson, 9 Cox, C. C. 555—Byles. But see 3 Russ. C. & M. 660.

In Arresting under Process of Law. —Attempting illegally to arrest a man is sufficient to reduce killing the person making the attempt to manslaughter, though the arrest was not actually made, and though the prisoner had armed himself with a deadly weapon to resist such attempt, if the prisoner was in such a situation that he could not have escaped from the arrest; and it is not necessary that he should have given warning to the person attempting to arrest him before he struck the blow. Rex v. Thompson, 1 M. C. C. 80.

If a constable takes a man without warrant upon a charge which gives him no authority to do so, and the prisoner runs away and is pursued by J. S., who was with the constable all the time, and charged by him to assist, and the man kills J. S. to prevent his retaking him, it will not be murder, but manslaughter only; because, if the original arrest was illegal, the recaption would have been so likewise. Rex v. Curvan, 1 M. C. C. 132.

Where a common soldier stabbed a serieant in the same regiment who had arrested him for some alleged misdemeanor:—Held, that as the articles of war were not produced, by which the arrest might have been justified, it was only manslaughter, as no authority appeared for the arrest. RexWhithers, 1 East, P. C. 295, 360.

Two private watchmen, seeing the prisoner and another person with two carts laden with apples, went up to them, intending, as soon | hand at the time, the constable

as they could get assistance, to secure them; one of the watchmen walked beside the prisoner, and the other watchman beside the other person, at some distance from the The other person woundprisoner. ed the watchman who was near him:—Held, that the prisoner could not be convicted of this wounding, unless the jury should be satisfied that the prisoner and the other person had not only gone out with a common purpose of stealing apples, but also had the common purpose of resisting, with extreme violence, any person who might attempt to apprehend them. Rex v. Collison, 4 C. & P. 565—Garrow.

A warrant leaving a blank for the christian name of the person to be apprehended, and giving no reason for omitting it, but describing him only as the son of J. S. L., (it appeared that J. S. L. had four sons, all living in his house), and stating the charge to be for assaulting A., without particularizing the time, place, or any other circumstances of the assault, is too general and unspecific. A resistance to an arrest thereon, and killing the person attempting to execute it, will not be murder. Rex v. Hood, 1 M. C. C. 281; S. P. Hoye v. Bush, 2 Scott, N. R. 85; 1 M. & G. 775; 1 Drink. 15.

If a servant of A. (who is not lord of the manor) finds a night poacher on the lands of B., and pursues him with intent to take him, this is such an attempt at an illegal arrest, that if the poacher shoots the servant with the gun which he has in his hand, and kills him, this will be manslaughter only. Rex v. Davis, 7 C. & P. 785— Parke.

A constable, having a warrant to apprehend A., gave it to his son, who, in attempting to arrest A., was stabbed by him with a knife which A. happened to have in his then being in sight, but a quarter | of a mile off:-Held, that his arrest was illegal; and that, if death had ensued, this would have been manslaughter only, unless it was shewn that A. had prepared the knife beforehand to resist the illegal violence. Rex v. Patience, 7 C. & P. 775—Parke.

In Driving Carriages or Horses. -If a person is driving a cart at an unusually rapid pace, and drives over another and kills him, he is guilty of manslaughter, though he called to the deceased to get out of the way, and he might have done so, if he had not been in a state of intoxication. Rex v. Walker, 1 C. & P. 320-Garrow.

A foot passenger walking at lamplight in the carriage road along a public highway, when the owner of a cart, who was proved to be near-sighted, drove along at the rate of eight or nine miles an hour, sitting at the time on a few sacks laid on the bottom of the cart, and ran over the foot passenger and killed him :-Held, that he was guilty of such carelessness as amounted to the crime of manslaughter. Rex v. Grout, 6 C. & P. 629.

If the driver of a carriage is racing with another carriage, and, from being unable to pull up his horses in time, the first-mentioned carriage is upset, and a person thrown off it and killed, this is manslaughter in the driver of the Rex v. Timmins, 7 C. carriage. & P. 499—Patteson.

If A. and B. are riding fast along a highway, as if racing, and A. rides by without doing any mischief, but B. rides against the horse of C., whereby C. is thrown and killed; this is not manslaughter in Rex v. Mastin, 6 C. & P. 396 -Patteson.

If each of two persons is driving a cart at a dangerous and a furious

other to drive at a dangerous and a furious rate along a turnpike road, and one of the carts runs over a man and kills him, each of the two persons is guilty of manslaughter; and it is no ground of defence that the death was partly caused by the negligence of the deceased himself, or that he was either deaf or dumb at the time. Reg. v. Swindall, 2 C. & K. 230; 2 Cox, C. C. 141—Pollock.

A driver of a spring-cart, standing in the cart and driving along a public road without reins, but not driving furiously, when a child runs across the road before the cart, and is killed by the wheel passing over it, is not guilty of manslaughter, unless he could have saved the life of the child if he had been driving with the reins in his hand. Reg. v.Dalloway, 2 Cox, C. C. 273.

If the driver of a conveyance uses all reasonable care and diligence, and an accident happens through some chance which he could not foresee or avoid, he is not to be held liable for the results of such accident. Reg. v. Murray, 5 Cox, C. C. 509.

The fact that streets are usually crowded from any public procession, or other cause, instead of excusing a driver when proceeding at his ordinary pace, and with ordinary care, requires him to be particularly cautious, and may tend to render him criminally answerable for any accidents ensuing from driving at a rate, and with those precautions, which he might have ordinarily observed. 16.

By letting loose Vicious Animals. —A man who having a horse, which he knows to be vicious and dangerous, turns it out upon a common through which, to his knowledge, pass much-frequented public footpaths, which are not fenced off, is guilty of culpable negligence, and if the horse kills any one passrate, and they are inviting each ing over the common, he may be

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convicted of manslaughter; nor is it any defence that the deceased had strayed from the way, where he is still so near it that the jury cannot say whether he is on or off Reg. v. Dant, L. & C. the path. 567; 10 Cox, C. C. 102; 11 Jur., N. S. 549; 34 L. J., M. C. 119; 13 W. R. 663; 12 L. T., N. S. 396.

In Navigating Vessels.]—Those who navigate the river Thames improperly, either by too much speed or by negligent conduct, are as much liable, if death ensues, as those who cause it on a public highway on land, either by furious driving or by negligent conduct. Reg.v. Taylor, 9 C. & P. 672-Parke.

To make the captain of a steam vessel guilty of manslaughter, in causing a person to be drowned by running down a boat, the prosecutor must show some act done by the captain; and a mere omission on his part, in not doing the whole of his duty, is insufficient. Rex v. Green, 7 C. & P. 156—Park and Alderson.

But if there is sufficient light, and the captain of a steamer is either at the helm or in a situation to be giving the command, and does that which causes the injury, he is guilty

of manslaughter. 1b.

The captain and pilot of a steam boat were both indicted for the manslaughter of a person who was on board of a smack, by running The running the smack down. down was attributed on the part of the prosecution, to improper steerage of the steam boat, arising from there not being a man at the bow to keep a look-out at the time of It was proved that the accident. there was a man on the look-out when the vessel started, about an hour previously. According to one witness, the captain and pilot were both on the bridge between the paddle-boxes; according to another, the pilot was alone on the paddle-lit was charged that the prisoner's

such personal misconduct on the part of either as to make them guilty of felony. Rex v. Allen, 7 C. & P. 153—Park and Alderson.

Persons on board a ship are necessarily subject to something like a despotic government, and it is extremely important that the law should regulate the conduct of those who exercise dominion over them. Reg. v. Leggett, 8 C. & P. 191— Alderson, Williams, and Coltman.

Therefore, in a case of manslaughter against the captain and the mate of a vessel for accelerating the death of a seaman, really in ill health, but who, they alleged, they believed to be a skulker, the question will be in determining whether it is a slight or an aggravated case, whether the phenomena of the death were such as would excite the attention of reasonable and humane men; and in such a case, if the deceased is taken on board after he was discharged from an hospital, it is important to inquire whether he was sent on board by the surgeon of the hospital, as a person in a fit state of health to perform the duties of a seaman. Ib.

A. being on board a ship, and B. in a boat alongside, they had a dispute about the payment for some goods, both being intoxicated. A., to get rid of B., pushed away the boat with his foot; B. reaching out. to lay hold of a barge, to prevent his boat from drifting away, overbalanced himself, and fell into the water and was drowned. charged with manslaughter:—Held, that these facts did not constitute that offence. Rex v. Waters, 6 C. & P. 328—Park and Patteson.

By Railway Policemen. —In an indictment for manslaughter by neglect to give a proper signal to denote the obstruction of a line of railway, whereby a collision took place and a passenger was killed: box:—Held, that there was not duty was to attend to the proper working of the signals according to the rules:—Held, that it was not necessary to set out the rules. Reg. v. Pargeter, 3 Cox, C. C. 191.

An averment that it was the prisoner's duty to signal an obstruction, and that there was an obstruction which the prisoner neglected to signal, was a sufficient description of the offence. *Ib*.

A count charging both a neglect to give the night signal and the giving of a wrong signal, is not bad for

duplicity. Ib.

It is sufficient to charge that the prisoner neglected and omitted to alter the signal, without stating more particularly which was the specific alteration which he neglected to make. *Ib*.

In Conduct and Management of Steam Engines and Railway Trains.]—An act of omission, as well as of commission, may be so criminal as to be the subject of an indictment for manslaughter. Reg. v. Lowe, 3 C. & K. 123; 4 Cox, C. C. 449—Campbell.

Where a man, appointed to superintend a steam-engine employed in a colliery for the purpose of raising colliers from the pits, left the engine in the charge of an ignorant boy, who told him that he was unable to manage it, and in the absence of the engineer a man was drawn up, who was killed from the want of skill in the boy to manage the engine:—Held, that this was manslaughter in the engineer. Ib.

Where an engineer who had charge of an engine which was worked for the purpose of keeping up a supply of pure air in a mine neglected his duty, so that the engine stopped, and the mine thereby became charged with foul air, which afterwards exploded and caused the death of one of the miners: — Held, that the engineer could not be convicted of manslaughter on an indictment which did not allege a duty in him which

he had neglected to perform. Reg. v. Barrett, 2 C. & K. 343—Wightman,

An explosion having occurred on board a steamer, whereby one of three persons in charge of her was killed, the circumstance that the valves were out of order is not sufficient to make out, against either or both of them (one being the master and the other engineer), a case of such culpable negligence as would sustain a charge of manslaughter. Reg. v. Gregory, 2 F. & F. 153—Hill

A party having the charge of a steam-engine, stopped it and went away; another party came and set it in motion, whereby a person was killed:—Held, that the party who went away was not the party by whose negligence the death was caused, and therefore he was not guilty of manslaughter. *Hilton's case*, 2 Lewin, C. C. 214—Alderson.

On an indictment against an engine-driver and a fireman of a railway train, for the manslaughter of persons killed while traveling in a preceding train, by the prisoners' train running into it, it appeared that on the day in question special instructions had been issued to them, which in some respects differed from the general rules and regulations, and altered the signal for danger, so as to make it mean not "stop," but "proceed with caution;" that the trains were started by the superior officers of the company irregularly, at intervals of about five minutes; that the preceding train had stopped for three minutes, without any notice to the prisoners except the signal for caution; and that their train was being driven at an excessive rate of speed; and that then they did not slacken immediately on perceiving the signal, but almost immediately, and that as soon as they saw the preceding train they did their best to stop, but without effect:-Held, first, that

sistent with the general rules, superseded them. Reg. v. Trainer, 4 F. & F. 105—Willes.

Held, secondly, that if the prisoners honestly believed they were observing them, and they were not obviously illegal, they were not criminally responsible. Ib.

Held, thirdly, that the fireman, being bound to obey the directions of the engine-driver, and, so far as appeared, having done so, there was

no case against him. 1b.

Where a fatal railway accident had been caused by the train running off the line, at a spot where rails had been taken up, without allowing sufficient time to replace them, and also without giving sufficient or, at all events, effective warning to the engine-driver; and it was the duty of the foreman of plate-layers to direct when the work should be done, and also to direct effective signals to be given:-Held, that though he was under the general control of an inspector of the district, the inspector was not liable, but that the foreman was, assuming his negligence to have been a material and a substantial cause of the accident, even although there had also been negligence on the part of the enginedriver in not keeping a sufficient Reg. v. Benge, 4 F. & look-out. F. 504—Pigott.

Upon a trial for manslaughter, it appeared that the prisoner was the driver and the deceased was the fireman of a steam-engine on a railway, and that the death of the latter was caused by the engine coming into collision with a train standing on the same line of rails, owing to a neglect on the part of the person in charge of the engine to keep a sufficient look-out. There was evidence that it was the duty of the prisoner, or of the deceased, to keep the look-out, but there was no evidence as to whom of the two was charged with the duty at the time of the collision:— Held, that the prisoner was entitled to an acquittal. Reg. v. Gray, 4 F. & F. 1098—Willes.

When a collision occurs on a railway, and death is caused, the person responsible is the man actually in charge of the engine, and whose negligence caused the accident at the time of the collision. Reg. v. Birchall, 4 F. & F. 1087—Willes.

By Medical Practitioners and Quacks. — If a person, bona fide and honestly exercising his best skill to cure a patient, performs an operation which causes the patient's death, he is not guilty of manslaughter; and it makes no difference whether such person is a regular surgeon or not, nor whether he has had a regular medical education or not. Rex  $\nabla$ . Van Butchell, 3 C. & P. 629—Hullock and Littledale.

A person in the habit of acting as a man midwife, tearing away part of the prolapsed uterus of one of his patients, supposing it to be a part of the placenta, by means of which the patient dies, he is not indictable for manslaughter, unless he is guilty of criminal misconduct arising either from the grossest ignorance or from the most criminal inattention. Rexv. Williamson, 3 C. & P. 635—Ellenborough.

A person acting as a medical man, whether licensed or unlicensed. is not criminally responsible for the death of a patient, occasioned by his treatment, unless his conduct is characterized either by gross ignorance of his art, or by gross inattention to his patient's safety. Rex v. St. John Long, 4 C. & P. 398 — Park and Garrow.

Where a person, undertaking the cure of a disease (whether he has received a medical education or not), is guilty of gross negligence in attending his patient after he has applied a remedy, or of gross rashness in the application of it, and death ensues in consequence of either, he is liable to be convicted

Rex v. St. John of manslaughter. Long, 4 C. & P. 423—Bayley, Bolland and Bosanquet.

Where a person, grossly ignorant of medicine, administers a dangerous remedy to one labouring under a disease, proper medical assistance being at the time procurable, and that dangerous remedy causes death, the person so administering it is guilty of manslaughter. Rex v. Webb, 1 M. & Rob, 405; 2 Lewin, C. C. 196—Lyndhurst.

If a medical man, though lawfully qualified to practise as such, causes the death of a person by the grossly unskillful, or the grossly incautious use of a dangerous instrument, he is guilty of manslaughter. Reg. v. Spilling, 2 M. & Rob. 107

-Coleridge.

Any person, whether a licensed medical practitioner or not, who deals with the life or health of any of his Majesty's subjects, is bound to have competent skill; and is bound to treat his or her patients with care, attention and assiduity; and if a patient dies for want of either, the person is guilty of manslaughter. Rex v. Spiller, 5 C. & P. 333—Bolland and Bosanquet. See Rex v. Simpson, 1 Lewin, C. C. 172; Rex v. Ferguson, 1 Lewin, C. C. 181.

The application by an ignorant person of a corrosive sublimate which caused death, is evidence for the jury on an indictment for manslaughter, the question being, under all the circumstances, whether he acted with criminal inattention and carelessness. Reg. v. Crook, 1 F. & F. 521-Watson.

Where a person, not a regular practitioner, administers lobelia, a dangerous medicine, which produces death, the question for the jury is, under all the circumstances, whether he has acted so rashly and carelessly as to cause the death. Reg.v. Crick, 1 F. & F. 519—Pollock.

On an indictment for manslaughter, by reason of gross negligence ter against a medical man, for ad-Fish. Dig.—26. Digitized by Microsoft®

and ignorance in surgical treatment, neither on the one side nor the other can evidence be gone into of former cases treated by the prisoner, but witnesses may be asked causa scientiæ their opinion as to his skill. Reg. v. Whitehead, 3 C. & K. 202 --Maule.

An indictment against a medical practitioner charged that he made divers assaults on the deceased, a patient, and applied wet cloths to his body, and caused him to be put in baths:—Held, that this was a proper mode of laying the offence, although all that was done was by the consent of the deceased; and that the indictment need not charge an undertaking to perform a cure, and a felonious breach of duty. Reg. v. Ellis, 2 C. & K. 470—Tindal and Rolfe.

A mistake on the part of a chemist in putting a poisonous liniment into a medicine bottle, instead of a liniment bottle, in consequence of which the liniment was taken by his customer internally, with fatal results, the mistake being made under the circumstances which rather threw the prisoner off his guard, does not amount to such criminal negligence as will warrant a conviction for manslaughter. Reg. v. Noakes, 4 F. & F. 920—Erle.

A medical man, who administered to his mother, for some disease, prussic acid, of which she almost immediately died, is not guilty of manslaughter, it not appearing distinctly what the quantity was which he had administered, or what quantity would be too great to be administered with safety to life. Reg. v. Bull, 2 F. & F. 201—Cockburn.

An unskilled practitioner who ventures to prescribe dangerous medicines, of the use of which he is ignorant, that is culpable rashness, for which he will be responsi-Reg. v. Markuss, 4 F. & F. 356—Willes.

On an indictment for manslaugh-

ministering poison by mistake for it is only manslaughter. Anon., 1 some other drug, the prosecution is bound to shew that the poison got into the mixture in consequence of his gross negligence, and it is sufficient to shew merely that the prisoner, who dispensed his own drugs, supplied a mixture which contained a large quantity of poison. The jury must be satisfied that there was gross and culpable negligence as would shew an evil mind. Reg. v. Spencer, 10 Cox, C. C. 525—Willes.

Theremust be a competent knowledge and care in dealing with a dangerous drug. If a person is ignorant of the nature of the drug he uses, or is guilty of gross want of care in the use of it, he will be criminally responsible for the consequences. Reg. v. Chamberlain, 10 Cox, C. C. 486—Blackburn.

A person, professing himself to be a herbalist, administered arsenical ointment to a woman having a tumour, of which she died. gave her no caution or directions as to the use of it. The judge directed the jury, that if he administered the arsenic without knowing or taking the pains to find out what its effects would be; or if, knowing this, he gave it to the deceased to be used by her without giving her adequate directions as to its use, he would be guilty of culpable negligence, and therefore of manslaughter. Ib.

In the Course of Authoritative Chastisement. — A schoolmaster who, on the second day of a boy's return to school, wrote to his parent, proposing to beat him severely, in order to subdue his alleged obstinacy, and on receiving the father's reply, assenting thereto, beat the boy for two hours and a half secretly in the night, and with a thick stick, until he died, is guilty of manslaughter. Reg. v. Hopley, 2 F. & F. 202—Cockburn.

If a father beats his son for theft so severely with a rope that he dies,

East P. C. 261.

Where a person in loco parentis inflicts corporal punishment on a child, and compels it to work for an unreasonable number of hours, and beyond its strength, and the child dies, the death being of consumption, but hastened by the illtreatment, it will not be murder, but only manslaughter in the person inflicting the punishment, although it was cruel and excessive, and accompanied by violent and threatening language; if such person believed that the child was shamming illness, and was really able to do the quantity of work required. Rex v. Cheeseman, 7 C. & P. 455—Vaughan.

#### 3. Abroad and at Sea.

By 24 & 25 Vict. c. 100 s. 9, " where any murder or manslaugh-"ter shall be committed on land "out of the United Kingdom, "whether within the Queen's do-"minions or without, and whether "the person killed were a subject "of her Majesty or not, every of-"fence committed by any subject "of her Majesty in respect of any "such case, whether the same shall "amount to the offence of murder " or of manslaughter, or of being ac-"cessory to murder or manslaugh-"ter, may be dealt with, inquired " of, tried, determined and pun-"ished in any county or place "in England or Ireland in which "such person shall be appre-"hended or be in custody, in the "same manner in all respects as if "such offence had been actually "committed in that county or place: "provided that nothing herein con-"tained shall prevent any person "from being tried in any place out of England or Ireland for any "murder or manslaughter commit-"ted out of England or Ireland, in "the same manner as such person "might have been tried before the "passing of this act."

provision, 9 Geo. 4, c. 31, s. 7, which repealed 33 Hen. 8, c. 23, and 43 Geo. 3, c. 113, on this subject.)

By s. 10, "where any person, " being feloniously stricken, poison-" ed or otherwise hurt upon the sea " or at any place out of England or "Ireland, shall die of such stroke, " poisoning or hurt in England or "Ireland, or, being feloniously "stricken, poisoned or otherwise "hurt at any place in England or "Ireland, shall die of such stroke, " poisoning or hurt upon the sea, or "at any place out of England or "Ireland, every offence committed "in respect of any such case, wheth-"er the same shall amount to the "offence of murder or of man-"slaughter, or of being accessory to "murder or manslaughter, may be "dealt with, inquired of, tried, de-"termined and punished in the "county or place in England or "Ireland in which such death stroke, "poisoning or hurt shall happen, in "the same manner in all respects " as if such offence had been wholly "committed in that county "place." (Former provision, 9 Geo. **4,** c. 31, s. 8.)

By 23 & 24 Vict. c. 122, " power "is conferred on colonial legisla-"tures to pass corresponding enact-

" ments."

Semble, that where guns are fired by one vessel at another vessel, and those on board her generally, those guns are to be considered as shot at each individual on board her. v. Bailey, R. & R. C. C. 1.

A manslaughter committed in China by an alien enemy who had been a prisoner of war, and was then acting as a mariner on board an English merchant ship, could not be tried here under a commission issued in pursuance of 33 Hen. 8, c. 23, and 43 Geo. 3, c. 113, s. 36. Rex v. Depardo, 1 Taunt. 26; R. & R. C. C. 134.

A British subject was indictable under 33 Hen. 8, c. 23, for the mur-

though the murder was committed within the dominion of a foreign independent state. Rex v. Sawyer, R. & R. C. C. 294; 2 C. & K. 101; S. P., Rex v. Ealing, Car. C. L. 105. An indictment on 33 Hen. 8, c. 23, for the murder of one British subject by another in a foreign state, stating that the person murdered was at the time in the king's peace, was sufficient to shew that he was a British subject. *Ib*.

In an indictment on 9 Geo. 4, c. 31, s. 7, for murder committed by a British subject abroad, it must be averred that the prisoner and the deceased were subjects of his Maj-To prove the allegation that esty. the prisoner was a subject of his Majesty, his own declaration is evidence to go to the jury, and it will be for them to say, whether they are satisfied that he is in fact a British-born subject. Rex v. Helsham, 4 C. & P. 394—Bayley and

Bosanquet.

A Spaniard, being in England, signed articles to serve in a ship "bound on a voyage to the Indian seas and elsewhere, on a seeking and trading voyage (not exceeding three years' duration), and back to the United Kingdom." On the ship's arrival at Zanzibar, an island in the Indian seas, which was under the dominion of an Arab king, the captain left the vessel (in pursuance of an understanding in England), and set up in trade, and without the consent of the rest of the crew, engaged the Spaniard as an interpreter, the new captain of the ship not requiring him to serve on board. ship went two or three short voyages without him, and returned to anchor a few hundred yards from the shore, in a roadstead of seven fathoms water, between Zanzibar and several other islands. crew being on shore, a quarrel arose between the Spaniard and one of them, which led to blows by the der of another British subject, Spaniard, which killed the other Digitized by Microsoft®

The death took place on board ship. The Spaniard was brought to England, and indicted and tried in London under a special commission, issued in pursuance of 9 Geo. 4, c. 31, s. 7:—Held, that he could not be convicted—first, as he was not a subject of his Majesty within the meaning of that section; and secondly, that as the death was on shipboard, though the blows were given on shore, the offence could not be said to have been committed according to the words of the statute, "on land out of the United Kingdom." Rex v. Mattos, 7 C. & P. 458—Vaughan and Bosanquet.

A British subject, who committed a murder in a foreign country upon a person who was not a British subject, was triable in England under 9 Geo. 4, c. 31, s. 7. Reg. v. Azzopardi, 1 C. & K. 203; 2 M. C.

C. 289.

On the trial of Brazilians for the murder of P., it appeared, that a British cruiser, engaged in the prevention of the slave-trade, manned two boats, and sent them, commanded by a lieutenant, to board the Brazilian ship F.: he did so, and finding her fitted up for slaves, but with no slaves on board, took her. After this, the lieutenant in the ship F. chased the ship E., also Brazilian, and sent a boat with P., who was a midshipman, to board She had slaves on board and was captured, and part of her crew put on board the F., and left there, with the captain and cook of the F. as prisoners in charge of P. and British seamen. Neither the boats nor the F., after she was taken, had any instructions on board, but the cruiser had. Such of the crew of the E. as were thus put on board the F., and the cook of the F., all Brazilians, rose on P. and the British seamen and killed them all; but the captain of the F. would not join in the transaction. It was contended for the prosecution, that the F. and

3, c. 113, and 7 & 8 Geo. 4, c. 74, and the Portuguese and Brazilian treaties as to slave-trading; and that the prisoners were in lawful custody, and the ship F. in the lawful custody of the Queen's officers. The prisoners were convicted of the murder, but the majority of the judges held the conviction wrong. on the ground of want of jurisdiction in an English court to try an offence committed on board the F.: and that, if the lawful possession of that vessel by the British Crown through its officers would be sufficient to give jurisdiction, there was no evidence brought before the court at the trial to shew that the possession was lawful. Reg. v Serva, 2 C. & K. 53; 1 Den. C. C. 104.

Upon an indictment for murder, it was proved that the offence was committed upon the high seas, in a ship sailing under the British flag, which was foreign built, and all the crew of which, both officers and men, including the prisoner and the deceased, were foreigners. A certified copy of the register was put in evidence, in which one Rehder was described as the sole owner, and as being of London, and a merchant. Rehder was not a born Englishman, and there was no evidence of his having letters of denization, or that he had been naturalized:—Held, that the ship was not a British ship so as to give jurisdiction in this country to try the offence. Reg. v. Bjornsen, 10 Cox, C. C. 74; L. & C. 545; 11 Jur., N. S. 589; 34 L. J., M. C. 180; 13 W. R. 664; 12 L. T., N. S. 473.

On a charge of murder on the high seas, on board a British ship, The deceased having been thrown out of a foreign ship in a foreign port, the question whether all these facts must not be averred in each count of the indictment, in order to give a judge sitting under an ordinary commission of over and terminer and general gaol delivery E. were legally taken under 5 Geo. | jurisdiction to try the offence, as it arises on the record, is a point which will not be reserved for the Court of Criminal Appeal. Reg. v. Menham, 1 F. & F. 369—Polloek.

If one foreigner inflicts a blow on another foreigner in a foreign vessel on the high seas, and the person so struck in a few days afterwards lands in England and dies there, the homicide is not cognisable by the courts of this country by virtue of 9 Geo. 4, c. 31, s. 8, or of 2 Geo. 2, c. 21, s. 1. Reg. v. Lewis, Dears. & B. C. C. 182; 3 Jur., N. S. 523; 26 L. J., M. C. 104; 7 Cox, C. C. 277.

A foreigner on board a British ship on the high seas owes allegiance to the law of England, and if he commits an offence against that law, he is triable under 18 & 19 Vict. e. 91, s. 21, by any court of justice in her Majesty's dominions, within the jurisdiction of which he may, at the time of the indictment, happen to be, provided that such court would have had cognizance of the crime if committed within the limits of its ordinary jurisdiction. Reg. v. Sattler, 7 Cox, C. C. 431; 4 Jur., N. S. 98; Dears. & B. C. C. 525; 27 L. J., M. C. 48.

Where a foreigner, having committed larceny in England, was followed to Hamburgh by an English police-officer, who arrested bim without a warrant, and brought him against his will on board an English steamer trading between Hamburgh and London, and there kept him in custody in order that he might be tried for the larceny in England: the foreigner having shot the officer during the voyage, and whilst the steamer was on the high seas, under such circumstances that if the killing had been by an Englishman in an English county, the offence would have been murder:-Held, that the Central Criminal Court had jurisdiction under 18 & 19 Vict. c. 91, s. 21, to try the foreigner for the murder of the police-officer. Ib.

4. Principals, Accessories and Abettors.

(24 & 25 Vict. c. 100, s. 67.)

Where persons combine to stand by one another in a breach of the peace, with a general resolution to resist all opposers, and in execution of their design a murder is committed, all of the company are equally principals in the murder, though at the time of the fact some of them were at such a distance as to be out of view. Reg. v. Howell, 9 C. & P. 437—Littledale.

The doctrine of constructive homicide, as regards offenders not actually present at, or parties to, an act of homicide, but sought to be made liable for it, by reason of being engaged in a common purpose, in the course of carrying out which the act of homicide occurs, only applies (there being no evidence of a common intent to carry out the purpose at all hazards, and by all means), where the common purpose is felonious; not where it is merely unlawful, as in the case of a misdemeanor, such as nightpoaching. Reg. v. Skeet, 4 F. & F. 931—Pollock.

A statement by a prisoner that A. had proposed to him to murder B. on the following night, and that he (the prisoner) agreed to go, but did not do so, is not of itself evidence that the prisoner was accessory before the fact to the murder of B. by A. on that night. Reg. v. Blackburn, 6 Cox, C. C. 333—Talfourd.

If husband and wife jointly commit a murder, both are equally amenable to the law, as the doctrine of presumed coercion of the wife does not apply in murder. Reg. v. Manning, 2 C. & K. 903.

So also a wife is amenable as an accessory before the fact to a murder committed by her husband; but if the only part she took in the transaction was in harbouring and comforting her husband after the

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crime was committed, she is not liable as an accessory after the fact.

A count in an indictment charged A. with the murder of B., and also charged C. and D. with being present, aiding and abetting A. in the commission of the murder. was an insane person :-Held, therefore, that C. and D. could not be convicted on this count. Reg. v. Tyler, 8 C. & P. 616—Denman.

If a person knowingly invites another to a certain place, in order that he may be murdered, and he is murdered accordingly, that would constitute such person an accessory before the fact to the murder.

v. Manning, 2 C. & K. 903.

#### 5. Conspiring or Soliciting to commit Murder.

By 24 & 25 Vict. c. 100, s. 4, " all persons who shall conspire, con-" federate and agree to murder any " person, whether he be a subject " of her Majesty or not, and wheth-" er he be within the Queen's domin-"ions or not, and whosoever shall " solicit, encourage, persuade, or en-"deavor to persuade, or shall pro-" pose to any person to murder any "other person, whether he be a "subject of her Majesty or not, and " whether he be within the Qucen's "dominions or not, shall be guilty " of a misdemeanor, and, being con-"victed thereof, shall be liable, at " the discretion of the court, to be "kept in penal servitude for any "term not more than ten and not "less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-" bour."

Evidence that A. was privy to a plot to murder B. by explosive machines, is sufficient to go to the jury on counts charging A. with the murder of C. (accidentally killed by the explosion)—with conspiring to murder him, and as an accessory to the

Reg. v. Bernard, 1 F. & murder. F. 240—Campbell.

At a period of the trial when it had been proved that the grenades by which the death in question had been caused had been ordered by A.; but when there was no evidence to connect A. with the prisoner, it was proved that a letter in A.'s handwriting, bearing a memorandum in the hand of the prisoner, was found at his residence after his arrest upon the present charge:— Held, that such letter was admissible against him, not upon the ground that A. was a co-conspirator, but upon the ground that it was found in the possession of the prisoner, and was relevant to this inquiry.

## 6. Attempts to Murder and inflicting Grievous Bodily Harm.

(a) By administering Poison.

With Intent to Murder. ]—By 24 & 25 Vict. c. 100, s. 11, " who-" soever shall administer to, or cause "to be administered to, or to be taken "by any person, any poison or other "destructive thing, or shall by any "means whatsoever wound or cause "any grievous bodily harm to any "person, with intent in any of the " cases aforesaid to commit murder, "shall be guilty of felony, and, be-"ing convicted thereof, shall be li-" able, at the discretion of the court, "to be kept in penal servitude for "life, or for any term not less than "five years (27 & 28 Vict. c. 47), " or to be imprisoned for any term "not exceeding two years, with or "without hard labour, and with or " without solitary confinement." (Former enactment, 7 Will. 4 & 1 Vict. c. 85, s. 2.)

And by s. 14, "whosoever shall "attempt to administer to, or shall "attempt to cause to be adminis-"tered to, or to be taken by any "person, any poison or other de-"structive thing, with intent to "commit murder, shall, whether "any bodily injury be effected or

"not, be guilty of felony." (Punishment as in last section. Former enactments, 9 Geo. 4, c. 31, s. 11, and 7 Will. 4 & 1 Vict. c. 85, s. 3.)

It is not an administering of poison unless the poison is taken into the stomach. Therefore, where A. was indicted for administering poison to a woman, with intent to murder her; and the proof was that he gave her a bit of cake which contained arsenic and sulphate of copper, which she put into her mouth, but which she spit out again without having swallowed any part of it:—Held, that it was not sufficient to convict. Rex v. Cadman, Car. C. L. 237; 1 M. C. C. 114.

If a servant put poison into a coffee-pot which contained coffee, and when her mistress came down to breakfast, the servant told the mistress that she had put the coffee-pot there for her (the mistress's) breakfast, and the mistress drank the poisoned coffee—this was a causing the poison to be taken, within 9 Geo. 4, c. 31, s. 11. Rex v. Harley, 4 C. & P. 369—Park.

If A. sent poison intending it for B., and with intent to kill B., and it came into the possession of C., who took it, A. might be indicted on 9 Geo. 4, c. 31, s. 11, for administering it to C. Rex v. Lewis, 6 C. & P. 161—

Gurney.

The delivery of poison to an agent, with directions to him to cause it to be administered to another under such circumstances that, if administered, the agent would be the sole principal felon, was not an attempt to administer poison within the 7 Will. 4 & 1 Vict. c. 85, s. 3. Reg. v. Williams, 1 C. & K. 589; 1 Den. C. C. 39.

Administering unbroken cocculus indicus berries to an infant was administering poison within 7 Will. 4 & 1 Vict. c. 85, s. 2, although it was proved that the berries were not poisonous until the exterior or pod was broken, and that by reason of the weakness of the infant's digestive or-

gans, the berries were innocuous. Reg. v. Cluderay, 1 Den. C. C. 515; 2 C. & K. 907; T. & M. 219; 14 Jur. 71; 19 L. J., M. C. 119; 4 Cox, C. C. 84.

A person who at the same time administers a poison and its antidote does not administer poison.—Alderson. *Ib.* 

Putting poison in a place where it is likely to be found and taken, if done with an intent to murder, was an attempt to administer poison within 7 Will. 4 & 1 Vict. c. 85, s. 3. Reg. v. Dale, 6 Cox, C. C. 14—Wightman.

Upon an indictment under 7 Will. 4 & 1 Vict c. 85, ss. 3, 4, for administering poison with intent to murder, a previous acquittal on an indictment for murder founded on the same facts could not be pleaded in bar. Reg. v. Connell, 6 Cox, C. C. 178—Williams and Talfourd.

Under 24 & 25 Vict. c. 100, ss. 23, 24, if a noxious thing is unlawfully administered with intent only to injure or annoy, and does, in fact, inflict grievous bodily harm, a felony is committed. Tulley v. Corrie, 17 L. T., N. S. 140; 10 Cox, C. C. 640—Q. B.; S. C. 10 Cox, C. C. 584, at Nisi Prius.

With Intent to inflict Grievous Bodily Harm.]—By 24 & 25 Vict. c. 100, s. 23," whosoever shall unlaw-" fully and maliciously administer to, " or cause to be administered to or "taken by, any other person, any "poison or other destructive or nox-"fous thing, so as thereby to endan-"ger the life of such person, or so as "thereby to inflict upon such person "any grievous bodily harm, shall be "guilty of felony, and being convict-"ed thereof, shall be liable, at the "discretion of the court, to be kept " in penal servitude for any term not "exceeding ten years, and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, with " or without hard labour." (Similar to former provision, 23 Vict. c. 8, s. 1.)

With Intent to Injure, Aggrieve, or Annoy.] - By s. 24, "whosoever "shall unlawfully and maliciously "administer to, or cause to be ad-"ministered to or taken by, any oth-"er person, any poison or other de-" structive or noxious thing, with in-"tent to injure, aggrieve or annoy "such person, shall be guilty of a "misdemeanor, and, being convict-"ed thereof, shall be liable, at the " discretion of the court, to be kept "in penal servitude for the term of " five years (27 & 28 Vict. c. 47), " or to be imprisoned for any term "not exceeding two years, with or "without hard labour." (Similar to 23 Vict. c. 8, s. 2.)

By s. 25, "if, upon the trial of any "person for any felony in the last "but one preceding section mention-"ed, the jury shall not be satisfied "that such person is guilty thereof, "but shall be satisfied that he is "guilty of any misdemeanor in the "last preceding section mentioned, "then and in every such case the "jury may acquit the accused of "such felony, and find him guilty " of such misdemeanor, and there-"upon he shall be liable to be pun-" ished in the same manner as if con-" victed upon an indictment for such " misdemeanor." (Similar to 23 Vict. c. 8, s. 3.)

Administering cantharides to a woman, with intent to excite her sexual passion, in order to obtain connexion with her, was an administering with intent to injure, aggrieve or annoy, within 23 Vict. c. 8, s. 2. Reg. v. Wilkins, L. &. C. 89; 9 Cox, C. C. 20; 31 L. J., M. C. 72; 7 Jur., N. S. 1128; 10 W. R. 62; 5 L. T., N. S. 330.

But administering cantharides to a woman, with intent to injure her health, was not a misdemeanor at common law, neither was it an assault, nor within 7 Will, 4 & 1 Vict. c. 85. Reg. v. Hanson, 4 Cox, C.
C. 138; 2 C. & K. 912.—Williams.

Administering Chloroform or Stupefying Drugs. -- By 24 & 25 Vict. c. 100, s. 22, "whosoever shall un-" lawfully apply or administer to, or "cause to be taken by, or attempt "to apply or administer to, or at-"tempt to cause to be administered "to or taken by, any person, any "chloroform, laudanum or other stu-" pefying or overpowering drug, mat-"ter or thing, with intent in any of "such cases thereby to enable him-"self or any other person to com-" mit, or with intent in any of such "cases thereby to assist any other " person in committing, any indict-" able offence, shall be guilty of fel-"ony, and, being convicted thereof, " shall be liable, at the discretion of "the court, to be kept in penal serv-" itude for life, or for any other term "not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two " years, with or without hard la-"bour." (Former provision, 14 & 15 Vict. c. 19, s. 3.)

Indictment.]—A prisoner was indicted for mixing sponge with milk, and administering it with intent to poison. The indictment was insufficient, because it did not aver that the sponge was of a deleterious or a poisonous nature. Rex v. Powles, 4 C. & P. 571—Alderson.

Evidence.]—An indictment for causing poison to be taken by A. with intent to murder A, is not sustained by evidence shewing that the poison, although taken by A., was intended for another person. Reg. v. Ryan, 2 M. & Rob. 213—Parke.

On an indictment for administering poison with intent to murder, the police having, in consequence of certain information, found the bottle containing the poison in a place used by the prisoner, are bound to disclose from whom they had the information. Reg. v. Richardson, 3 F. & F. 693—Cockburn.

(b) With Intent to procure Miscarriage or Abortion.

Statute. - By 24 & 25 Vict. c. 100, s. 58, "every woman, being " with child, who, with intent to pro-"cure her own miscarriage, shall "unlawfully administer to herself " any poison or other noxious thing, " or shall unlawfully use any instru-"ment or other means whatsoever " with the like intent, and whosoev-" er, with intent to procure the mis-"carriage of any woman, whether "she be or be not with child, shall "unlawfully administer to her, or " cause to be taken by her, any poi-" son or other noxious thing, or shall "unlawfully use any instrument "or other means whatsoever, with "the like intent, shall be guilty of "felony, and, being convicted there-" of, shall be liable, at the discretion " of the court, to be kept in penal "servitude for life or for any term "not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two " years, with or without hard labour, "and with or without solitary con-"finement." (Former provisions, 7 Will. 4 & 1 Viet. c. 85, s. 6; 9 Geo. 4, c. 31, s. 13. By 9 Geo. 4, c. 31, the 43 Geo. 3, c. 58, Lord Ellenborough's Act, was repealed.)

By s. 59, "whosoever shall unlaw"fully supply or procure any poison
"or other noxious thing, or any in"strument or thing whatsoever,
"knowing that the same is intended
"to be unlawfully used or employed,
"with intent to procure the miscar"riage of any woman, whether she
"be or be not with child, shall be
"guilty of a misdemeanor, and, be"ing convicted thereof, shall be li"able, at the discretion of the court,
"to be kept in penal servitude for
"the term of five years (27 & 28
"Vict. c. 47), or to be imprisoned

"for any term not exceeding two years, with or withouthard labour."

What within.]—A small quantity of savin, not sufficient to do more than produce a little disturbance in the stomach, was not a noxious thing within 7 Will. 4 & 1 Viet. c. 85, s. 6. Reg. v. Perry, 2 Cox, C. C. 223—Wilde.

Upon an indictment, under 24 & 25 Vict. c. 100, s. 59, for supplying a certain noxious thing, knowing that the same is intended to be used with intent to procure miscarriage, it is necessary to prove that the thing supplied is noxious. The supplying an innoxious drug, whatever may be the intent of the person supplying its not an offence against that enactment. Reg. v. Isaacs, L. & C. 220; 9 Cox, C. C. 228; 9 Jur., N. S. 212; 32 L. J., M. C. 52; 11 W. R. 95; 7 L. T., N. S. 365.

In order to constitute the offence of supplying a noxious thing, with the intention that it shall be employed in procuring abortion within 24 & 25 Vict. c. 100, s. 59, it is not necessary that the intention of employing it should exist in the mind of any other person than the person supplying it. Reg. v. Hillman, L. & C. 343; 9 Cox, C. C. 386; 33 L. J., M. C. 60; 12 W. R. 111; 9 L. T., N. S. 518.

If A. procures poison and delivers it to B., both intending that B. should take it for the purpose of procuring abortion, and B. afterwards takes it with that intent in the absence of A., A. might be convicted under 7 Will. 4 & I Vict. c. 85, s. 6, of causing it to be taken. Reg. v. Wilson, Dears. & B. C. C. 127; 7 Cox, C. C. 190; 2 Jur., N. S. 1146; 26 L. J., M. C. 18.

The prisoner, in a conversation with a woman who was pregnant, told her that he knew of something that would get rid of her child. On being asked what it was, he said it was savin. He afterwards brought

the woman some savin, and gave her directions how to take it. She took the savin accordingly, and the prisoner called from time to time to inquire the effect. The prisoner also made up into pills a drug which the woman had obtained at his request. After taking the savin and the pills the woman became and continued very ill till she was confined:—Held, a causing to be taken within 7 Will. 4 & 1 Viet. c. 85, s. 6. Reg. v. Farrow, Dears. & B. C. C. 164; 3 Jur., N. S. 167.

Who Indictable. —The deceased woman became pregnant by the prisoner, and died from the effects of corrosive sublimate taken by her for the purpose of producing abor-The prisoner knowingly procured it for the deceased, at her instigation, and under the influence of threats of self-destruction, if the means of producing abortion were not supplied to her. The jury negatived the fact of his having administered it, or caused it to be taken by her:—Held, that he was not guilty of murder as an accessory before the fact. Reg. v. Fretwell, 9 Cox, C. C. 153; L. & C. 161; 8 Jur., N. S. 466. But see 24 & 25 Vict. c. 100, ss. 58, 59.

If a person intending to procure abortion does an act which causes a child to be born so much earlier than the natural time, that it is born in a state much less capable of living, and afterwards dies in consequence of its exposure to the external world, the person who by this misconduct so brings the child into the world, and puts it thereby in a situation in which it cannot live, is guilty of murder, and the mere existence of a possibility that something might have been done to prevent the death would not render it less murder. Reg. v. West, 2 C. & K. 784; 2 Cox, C. C. 500-Maule.

An indictment under 7 Will. 4

& 1 Vict. c. 85, s. 6, for using an instrument with intent to procure miscarriage:—Held, immaterial whether or not the woman was pregnant at the time of the instrument being used. Reg. v. Goodhall, or Goodchild, 1 Den. C. C. 187; 2 C. & K. 293.

Under Repealed Statute of 43 Geo. 3, c. 58, s. 1.]—The expression "quick with child," in this statute meant when the woman felt the child move within her. Goldsmith's case, 3 Camp. 76—Lawrence.

Or, having conceived. Reg. v. Wycherley, 8 C. & P. 262—Gur-

ney.

Or, feeling the child alive and quick within, at whatever time the fœtus might have a separate existence. Rex v. Phillips, 3 Camp. 77.

To constitute the offence of administering poison or other noxious substance, under the same statute, some of the poison or noxious substance must have been taken by or applied to the woman. Rex v. Cadman, 1 M. C. C. 114.

On an indictment for administering a drug to a woman to procure abortion, she not being quick with child; it it appeared she was not quick with child at all, the prisoner was acquitted, although it appeared that he thought she was with child, and gave her the drug with an intent to destroy the child. Rex v. Scudder, 3 C. & P. 605; 1 M. C. C. 216.

(c) By Shooting, Wounding, Drowning, Suffocating or Strangling.

With Intent to Murder.]—By 24 & 25 Vict. c. 100, s. 14, "whoso-"ever shall shoot at any person, or "shall, by drawing a trigger or in "any other manner attempt to dis-"charge any kind of loaded arms at "any person, or shall attempt to "drown, suffocate or strangle any person, with intent, in any of the

"cases aforesaid, to commit mur"der, shall whether any bodily in"jury be effected or not, be guilty
"of felony, and, being convicted
"thereof, shall be liable, at the dis"cretion of the court, to be kept in
"penal servitude for life, or for any
"term not less than five years (27
"& 28 Vict. c. 47), or to be im"prisoned for any term not exceed"ing two years, with or without
"hard labour, and with or without
"solitary confinement." (Former enactment, 7 Will. 4 & 1 Vict. c. 85,
s. 3.)

And by s. 11, "whosoever shall, "by any means whatsoever, wound "or cause any grievous bodily harm "to any person, with intent to com-"mit murder, shall be guilty of felony." (Punishment as in last section. Former provision, 9 Geo. 4, c. 31, ss. 11, 12, and 7 Will. 4 & 1 Vict. c.

85, s. 2.)

The 7 Will. 4 & 1 Vict. c. 85, s. 1, repealed 9 Geo. 4, c. 31, ss. 11, 12.

If a person intending to shoot another, put his finger on the trigger of a loaded pistol, but was prevented from pulling the trigger, this was not an attempt to discharge loaded arms by drawing a trigger, or in any other manner, within 7 Will. 4 & 1 Vict. c. 85, ss. 3, 4, as the words, "in any other manner," in that statue, meant something analogously to drawing the trigger, which was the proximate cause of the loaded arms going off. Reg. v. St. George, 9 C. & P. 483—Parke.

The applying a lighted match to a loaded match-lock gun, or the striking of the percussion cap of a percussion gun, was a sufficient attempt within these enactments. *Ib*.

If intending to murder A., and supposing B. to be A., a person shoots at and wounds B., he may be convicted of wounding B., with intent to murder him. Reg. v. Smith, Dears. C. C. 559; 1 Jur., N. S. 1116; 25 L. J., M. C. 29.

On an indictment on 7 Will. 4 & 1 Viet. c. 85, s. 2, for the offence of in-

flicting an injury dangerous to life, with intent to murder, the jury ought not to convict unless satisfied that the prisoner had in his mind a positive intention to murder; and it is not sufficient that it would have been a case of murder if death had ensued. Reg. v. Cruse, 8 C. & P. 541—Patteson.

What are loaded Arms.]—By 24 & 25 Vict. c. 100, s. 19, "any gun, "pistol or other arms which shall be loaded in the barrel with gun"powder or any other explosive substance, and ball, shot, slug or other destructive material, shall be deemed to be loaded arms within the meaning of this act, although the attempt to discharge the same may fail from want of proper priming, or from any other cause."

A rifle which was loaded, but which for want of proper priming would not go off, was not a loaded arm within the 7 Will. 4 & 1 Vict. c. 85, s. 3; and the pointing of a rifle thus circumstanced at a person, and pulling the trigger of it, whereby the cock and hammer were thrown, and the pan opened, did not warrant a conviction either of felony under sect. 3. Reg. v. James, 1 C. & K. 530—Tindal.

In order to constitute the offence of attempting to discharge loaded fire-arms, within 43 Geo. 3, c. 58, they must have been so loaded as to be capable of doing the mischief intended. Rex v. Carr, R. & R. C. C. 377; S. P., Rex v. Whitley, 1 Lewin, C. C. 123.

If a pistol was loaded with gunpowder and balls, but its touch-hole was plugged, so that it could not by possibility be fired, this was not loaded arms, within 9 Geo. 4, c. 31, ss. 11, 12. Rex v. Harris, 5 C. & P. 159—Patteson.

Where on an indictment on 43 Geo. 3, c. 58, for maliciously shooting at a person, it appeared that the instrument was fired so near, and in

such a direction, as to be likely to kill or to do other grievous bodily harm to such person; and with an intent that it should do so, the case was within that act, although it was loaded with powder and paper only. Rex v. Kitchen, R. & R. C. C. 95.

A. sent a tin box to B., containing three pounds of gunpowder, and two detonators, which were intended to ignite the gunpowder when any person opened the box, and so destroy the person who opened it: -Held, that this was not an attempt to discharge loaded arms at B. within 9 Geo. 4, c. 31, ss. 11, 12. Rex v. Mountford, 7 C. & P. 242; 1 M. C. C. 441.

Shooting. —The fact of firing a gun into a room of A.'s house, with intent to shoot A., the prisoner supposing him to be in the room, will not support a charge of shooting at A., if he is not shewn to be in the room, or within reach of the shot. Rex v. Lovel, 2 M. & Rob. 39— Gurney.

A. was indicted for feloniously shooting at the prosecutor, with intent to do grievous bodily harm to The jury found that he did not aim at the prosecutor, or at any one else in particular, but that he fired into a group of persons, intending generally to do grievous bodily harm, and so unlawfully wounded: - Held, that he guilty of the felony charged, and not merely of the misdemeanor of unlawfully wounding. Reg. v. Fretwell, L. & C. 443; 9 Cox, C. C. 471; 10 Jur., N. S. 595; 33 L. J., M. C. 128; 12 W. R. 751; 10 L. T., N. S. 428.

A person intending to shoot at and kill L., shot at H., mistaking him for L., but did not kill H. an indictment for shooting at H., with intent to murder H., the judge left it to the jury to say whether there was an intent to murder H.; but he laid it down that the law inwhich is the immediate and necessary effect of the act which he commits. The jury found that the prisoner did not intend to do any harm to H., and the judge directed an acquittal to be recorded. Rex v. Holt, 7 C. & P. 519—Littledale.

A., a constable employed to watch a copse, seeing B. wrongfully carry away wood therefrom, calls to him to stop, and on B.'s running away, fires at and wounds him. B. had been frequently convicted summarily of the like offence, and by 7 & 8 Geo. 4, c. 29, s. 39, such stealing after two summary convictions The fact of these conis a felony. victions, as well as their legal consequences, was wholly unknown to A.:--Held, that A. was rightly convicted of wounding with intent to do grievous bodily harm. Reg. v. Dadson, 2 Den. C. C. 35; 3 C. & K. 148; T. & M. 385; 14 Jur. 1051; 20 L. J., M. C. 57; 4 Cox, C. C. 385.

An indictment under 9 Geo. 4, c. 31, s. 12, for maliciously shooting at A., was supported if he was struck with the shot, though the gun was aimed at a different person. Rex v. Jarvis, 2 M. & Rob. 40—Gurney.

A. had the barrels of a doublebarrelled percussion gun detached from the stock and lock, and by striking the percussion cap which was on the nipple of one of the barrels, he fired it and shot B.:—Held, to be within 9 Geo. 4, c. 31, ss. 11, Rex v. Coates, 6 C. & P. 394 -Patteson.

Gamekeepers being in a preserve between twelve and one at night heard the firing of two guns, and proceeding in the direction of the sound, met with two persons who neither had guns nor game upon them, nor were either found near The gamekeepers immediately seized them without calling on them to surrender, or in any way notifying to them who they were. The keepers were wounded, one of them seriously: - Held, that the fers that a party intends to do that prisoner who wounded them might,

under the circumstances, and taking into consideration the situation and the time of the night, be properly convicted under 9 Geo. 4, c. 31, ss. 11, 12. Rex v. Taylor, 7 C. & P. 266—Vaughan.

G. was charged with a felonious attempt to shoot. He was proved to have presented a pistol at a man and to have pulled the trigger, but the pistol did not go off. On examining the pistol, it was found that, if it ever had been primed, it would have been impossible for the priming to have fallen out, and the pistol must have gone off:—Held, that there was no ease to go to the jury. Reg. v. Gamble, 10 Cox, C. C. 545—Russell Gurney.

Indictment.]—Upon the trial of an indictment for shooting, with intent to murder a person unknown, it must be proved that there was an intent on the part of the prisoner to murder some particular person. Reg. v. Lallament, 6 Cox, C. C. 204—Jervis and Alderson.

In an indictment for maliciously shooting, under 7 Will. 4 & 1 Viet. c. 85, s. 4, it was sufficient to say, with a certain loaded gun, without going on to state with what it was loaded. Reg. v. Cox, 3 Cox, C. C. 58—Platt.

If an indictment for shooting another, with intent to murder, in all the counts avers that the pistol was loaded with powder and a leaden bullet, it must appear that the pistol was loaded with a bullet, or the prisoner will be entitled to an acquittal. Rex v. Hughes, 5 C. & P. 126—Park, Parke and Bolland. See Reg. v. Oxford, 9 C. & P. 525.

On an indictment for maliciously shooting, one act of shooting may be laid in one set of counts, as being with intent to murder H.; and in another set of counts as with intent to murder L. Rex v. Holt, 7 C. & P. 519—Littledale.

An indictment which charges that the prisoner feloniously assaulted J.

H., and, by feloniously "drawing the trigger of a pistol, loaded with gunpowder and a leaden bullet, then and there feloniously and maliciously did attempt to discharge the said pistol at J. H.," with intent to murder him, is good, without stating that "the said pistol" was "so loaded as aforesaid." Reg. v. Baker, 1 C. & K. 254—Rolfe.

Evidence. —An indictment on 7 Will. 4 & 1 Vict. e. 85, ss. 3. and 4, charged the prisoner with attempting to discharge at the prosecutor a certain blunderbuss, loaded with gunpowder and divers leaden shots. The prisoner, on a refusal by the prosecutor to give up some titledeeds, addressed him in these words: -"Then you are dead man," and immediately unfolded a great coat which he had on his arm, and took out a blunderbuss, but was not able to raise it to his shoulder, or point it directly at the prosecutor, before he was seized. The blunderbuss was found to be very heavily loaded, but the flint had dropped out, and was discovered between the lining of the great coat:—Held, that the evidence was not sufficient to sustain the charge in the indictment. Reg. v. Lewis, 9 C. & P. 523—Arabin, Serjt.

Upon an indictment for maliciously shooting, it appeared that there were two shootings; but it being questionable whether the first shooting was by accident or design:

—Held, that proof of the prisoner having intentionally shot at the person the second time, was evidence to shew that the first was wilful. Rex v. Voke, R. & R. C. C. 531.

Evidence of a wound having been made by the contents of a pistol, although no ball was found, and of its having made a loud report, with reference to its size, is sufficient to go to a jury of its having been loaded with ball. Rex v. Weston, 1 Leach, C. C. 247.

An indictment charged the pris-

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oner in a first count with unlawfully and maliciously wounding, and in the second count with unlawfully and maliciously inflicting grievous bodily harm. The jury found the prisoner guilty of an assault:-Held, that he could be properly convicted of an assault on the indictment under 24 & 25 Vict. c. 100, s. 20, as the offences charged were misdemeanors, and each of them necessarily included the lesser misdemeanor of an assault. Reg. v.Taylor, 1 L. R., C. C. 194; 11 Cox, C. C. 261.

#### (d) Inflicting Grievous Bodily Harm.

Statute.]—By 24 & 25 Vict. c. 100, s. 18, " whosoever shall unlaw-"fully and maliciously, by any " means whatsoever, wound or cause "any grievous bodily harm to any "person, or shoot at any person, or, "by drawing a trigger or in any "other manner, attempt to dis-"charge any kind of loaded arms "at any person, with intent, in any "of the cases aforesaid, to maim, "disfigure or disable any person, or "to do some grievous bodily harm "to any person, or with intent to "resist or prevent the lawful ap-"prehension or detainer of any per-"son, shall be guilty of felony, and, "being convicted thereof, shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude for life, or for any term not "less than five years (27 & 28 Viet. "e. 47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment." (Previous provision, 7 Will. 4 & 1 Viet. e. 85, s. 4.)

As to what are loaded arms, see sect. 19.

By s. 20, "whosoever shall un-"lawfully and maliciously wound "or inflict any grievous bodily "harm upon any other person, "either with or without any weap" of a misdemeanor, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for the "term of five years (27 & 28 Vict. "c. 47), or to be imprisoned for "any term not exceeding two years, "with or without hard labour." (Former provision, 14 & 15 Vict. c. 19, s. 4.)

Cutting.]—On an indictment for maliciously cutting, malice against the individual cut is not essential, general malice is sufficient. Hunt, 1 M. C. C. 93.

The question is not what the wound is, but what wound was intended. Ib.

Where a party having a deadly weapon lawfully in his possession in his own defence, but without having previously retreated as far as possible, cut a person who was assaulting, he was guilty of felony, under 7 Will. 4 & 1 Vict. c. 85, s. 4, if he intended grievous bodily harm. Reg. v. Odgers, 2 M. & Rob. 479—Cresswell.

Cutting a female child's private parts, so as to enlarge them for the time, was considered as doing her grievous bodily harm, within 43 Geo. 3, c. 58, and done with that intent, although the hymen was not injured, the incision was not deep, and the wound eventually was not dangerous. Rex v. Cox, R. & R. C. C. 362; 1 Leach, C. C. 71.

A striking over the face and head with the sharp or the claw part of a hammer was a sufficient cutting, within 43 Geo. 3, c. 58. Rex v.Atkinson, R. & R. C. C. 104.

On an indictment for cutting, it appeared that the prisoner was seen in the night entering an outhouse with intent to commit a felony, by a person who went and informed the prosecutor of it. The latter in about a quarter of an hour went in search of the prisoner to apprehend him. The prisoner had left the " on or instrument, shall be guilty | prosecutor's premises, and was found

in a neighbouring garden, crouched | down under a tree, with a drawn sword in his hand. The prosecutor apprehended the prisoner, who cut and wounded him. It was objected that the prosecutor had no right to apprehend the prisoner, and that if death had ensued, it would have been manslaughter only. The prisoner was convicted, and the judges held the conviction right. Rex v. Howorth, Car. Supp. 231; 1 M. C. C. 207.

On a charge of feloniously cutting, with intent to do grievous bodily harm, it was immaterial whether, if death had ensued, the crime would have been murder or manslaughter. Reg. v. Nicholls, 9 C. & P. 267—Gurney.

Wounding. ] — To constitute a wound it is necessary that there should be a separation of the whole skin; and a separation of the cuticle or upper skin only is not sufficient. Reg. v. M'Loughlin, 8 C. & P. 635 —Coleridge.

In criminal cases, the definition of a wound is, an injury to the person by which the skin is broken. Moriarty v. Brooks, 6 C. & P. 684 -Lyndhurst; S. P., Rex v. Beckett, 1 M. & Rob. 526—Parke.

A blow given with a hammer on the face, which broke the lower jaw in two places; the skin was broken internally, but not externally, and there was not much blood, was a wounding within 7 Will. 4 & 1 Viet. c. 85, s. 4. Reg. v. Smith, 8 C. & P. 173--Parke.

A. asked permission at the house of B. to go and take some ashes, which he was allowed to do; but as he was coming out B.'s apprentice saw a copper tea-kettle among the ashes in A.'s basket, and told B. B. laid hold of A. to secure him, on the charge of stealing the tea-kettle, and in a scuffle A. and B. fell, and A. cut B. with a knife:—Held, to be a wounding within 7 Will. 4 & 1 Vict. c. 85, s. 4, provided that one of the Digitized by Microsoft®

the jury was satisfied that A. had stolen the kettle, as B. had then a right to apprehend him. Reg. v. Price, 8 C. & P. 282--Alderson.

Evidence of a violent kick on the private parts of a woman, which caused a flow of blood mingled with urine, for some time afterwards, was not a wounding within 7 Will. 4 & 1 Vict. c. 85, s. 4, no proof being given as to the precise point whence the blood originally came. Reg. v. Jones, 3 Cox, C. C.

A rupture of the lining membrane of the urethra, followed by a small flow, such rupture being caused by a kick on the private parts of the prosecutor, is a wounding within 7 Will. 4 & 1 Viet. c. 85, s. 4. Reg. v. Waltham, 3 Cox, C. C. 442.

To constitute the offence of wounding with intent to do grievous bodily harm, under 7 Will. 4 & 1 Vict. c. 85, s. 4, the wound must be direct, and therefore an injury occasioned by the prosecutor falling on some iron trams in consequence of a blow from the prisoner, was not within that statute. Reg. v. Spooner, 6 Cox, C. C. 392.—Talfourd.

In a case of wounding with intent to do grievous bodily harm, it is not essential that, if death had ensued, the offence of the prisoner should be murder; therefore, if it appears that, had death ensued, the offence would be manslaughter only, this is no ground of acquittal of the felony. Reg. v. Griffiths, 8 C. &. P. 248; 2 M. C. C. 40.

A broker and his man having levied a distress for rent, the man left in possession was ejected. The owner of the goods was not in the room at the time of the levy, and it was not proved that he was a party to the turning out of the man, or that he knew of the distress being levied, but on the broker and his assistants breaking open the outer door to re-enter, the prisoner struck one of the assistants with an axe on

the forehead:—Held, that, under these circumstances, the prisoner must at least be found guilty of an assault; and also, that, although he might be found guilty of wounding, with intent to do grievous bodily harm, yet he could not be found guilty of wounding, with intent to maim and disable. Reg. v. Sullivan, Car. & M. 209—Parke.

Where three persons were indicted jointly for cutting and wounding, and the third of them did not come up to the spot until after one of the first two had got away, and then kicked the prosecutor while he was on the ground struggling with the other:-Held, that the two who jointly assaulted the prosecutor, and wounded him at first, might be found guilty either of the felony, or of the assault only, but that the third must, under the circumstances, be acquitted altogether. v. M'Phane, Car. & M. 212—Tindal.

On an indictment for wounding, with intent to do some grievous bodily harm, it appeared that two persons, one of whom was the prisoner, attacked and wounded the prosecutor, and robbed him; it was not proved which of the persons inflicted the wound:—Held, that if the prisoner inflicted the wound on the prosecutor, with intent to rob him, he having at the same time an intent to do him some grievous bodily harm to effectuate such his intention of robbing, he ought to be convicted on this indictment. v. Bowen, Car. & M. 149-Coleridge.

Held, also, that even if the prisoner's was not the hand that inflicted the wound, he ought to be convicted, if the jury was satisfied that the two persons were engaged in the common purpose of robbing the prosecutor, and that the other person's was the hand which inflicted the wound. Ib,

On an indictment for wounding,

er, if death had ensued, the offence would have been murder, should consider whether the instrument employed was, in its ordinary use, likely to cause death; or if it is an instrument not likely, under ordinary circumstances, to cause death, whether it was used in such an extraordinary manner as to make it likely to cause death, either by continual blows or otherwise. Rex v. Howlett, 7 C. & P. 274—Alderson.

Cases under the Repealed Statute of 9 Geo. 4, c. 31, ss. 11, 12.]— Breaking a person's collar bone, and bruising him, was not a wounding within 9 Geo. 4, c. 31, s. 12. Rex v. Wood, 4 C. & P. 381.

If a person, for the purpose of accomplishing a robbery, wounded by means of kicking the shins of the party whom he was endeavoring to rob, he was punishable under 9 Geo. 4, c. 31, s. 12, if the jury found thathis intent was either to disable or do grievous bodily harm. Rex v. Shadbolt, 5 C. & P. 504—Denman and Vaughan.

Biting off the end of a person's nose was not a wounding within 9 Geo. 4, c. 31, s. 12; nor was biting off a joint from a person's finger, as the statute was intended only to apply to wounding produced by some instrument, and not by the hands or teeth. Rex v. Harris, 7 C. & P. 446—Patteson; S. P., Jenning's case, 2 Lewin, C. C. 130—Alderson.

But a wound from a kick with a shoe was within 9 Geo. 4, c. 31. s. 12. Rex v. Briggs, 1 M. C. C. 318; 1 Lewin, C. C. 61.

The prisoner struck the prosecutor on the side of his hat with an air-gun, with great force, by which the prosecutor was wounded, but the wound was made by the violence with which the hat was struck. the weapon used by the prisoner never coming in contact with the head of the prosecutor:—Held, a the jury, upon the question wheth- wounding within 9 Geo. 4, c. 31, ss.

11 & 12. Rex v. Sheard, 7 C. & P. 846.

Maliciously throwing oil of vitriol over the prosecutor's face, with intent to disfigure, and so wounding his face, was not a wounding within 9 Geo. 4, c. 31, s. 12. Rex v. Murrow, 1 M. C. C. 456; S. P., Henshall's case, 2 Lewin, C. C. 135.

Inflicting a wound on a person by throwing a sledge-hammer at him, was a wounding within 9 Geo. 4, c. 31, ss. 11, 12, although the sledge-hammer, from being blunt, was not an instrument calculated to inflict a wound. Reav. Withers, 4 C. & P. 446; 1 M. C. C. 294.

If a person struck another with a bludgeon, and broke the skin and drew blood, this was a sufficient wounding within 9 Geo. 4, c. 31, ss. 11, 12. Rex v. Payne, 4 C. & P. 558—Patteson.

Indictment.]—On an indictment for wounding with intent, the actual intent must be proved. Reg. v. Cox, 1 F. & F. 664—Bramwell.

A party may be guilty of unlawfully wounding, though there is no intent to wound, if the weapon used is calculated to wound, and known to be such. *Ib*.

In an indictment for wounding with intent to murder, the instrument or means by which the murder was inflicted need not be stated, and, if stated, do not confine the prosecutor to prove a wound by such means. Rex v. Briggs, 1 M. C. C. 318; 1 Lewin, C. C. 61.

An indictment for cutting and wounding, which charged the offence to have been committed "feloniously, wilfully and maliciously," was bad, the words of 9 Geo. 4, c. 31, ss. 11 & 12, being "unlawfully and maliciously." Rex v. Ryan, 7 C. & P. 854; 2 M. C. C. 15.

Grievous Bodily Harm.]—Where "cut, stab or wound any person, a woman jumps out of a window "the jury shall be satisfied that for the purpose of avoiding the violence of her husband, and sustains "cutting, stabbing or wounding

dangerous bodily injury, the husband cannot be convicted of an attempt to murder, unless he intended by his conduct to make her jump out of the window. Reg. v. Donovan, 4 Cox, C. C. 399—Alderson.

A woman left her infant child, on a cold wet day, exposed in an open field, intending that it should die. It was found there after some hours. nearly dead from congestion of the lungs and heart, the effects of the exposure. By care, however, the child was restored in a few hours, and there then remained no bodily injury either to the lungs or heart, or otherwise:—Held, that a conviction under 7 Will. 4 & 1 Vict. c. 85, s. 2, for causing a bodily injury dangerous to life, could not be supported, as there was no lesion of any part of the organs of the child. Reg. v. Gray, Dears. & B. C. C. 303; 7 Cox, C. C. 326; 3 Jur., N. S. 989; 26 L. J., M. C. 203.

To constitute grievous bodily harm it is not necessary that the injury should be either permanent or dangerous; if it is such as seriously to interfere with comfort or health, it is sufficient. Reg. v. Ashman, 1 F. & F. 88—Willes.

Where a party strikes at A., and B., interposing, receives the blow, he cannot be convicted of wounding with intent to do grievous bodily harm to B. The use of a deadly weapon is not justifiable in repelling a common assault; there must be the apprehension of serious bodily danger or of robbery, or some similar offence of violence. Reg. v. Hewlett, 1 F. & F. 91—Crowder.

Verdict.]—By 14 & 15 Vict. c. 19, s. 5, (unrepealed), "if upon the "trial of any indictment for any "felony, except murder or man"slaughter, where the indictment "alleges that the defendant did "cut, stab or wound any person, "the jury shall be satisfied that "the defendant is guilty of the "cutting, stabbing or wounding

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"charged in the indictment, but are not satisfied that the defendant is guilty of the felony charged,
the jury may acquit the defendant of such felony, and find him
upuilty of unlawfully cutting, stabbing or wounding, and the defendant shall be liable to be punished in the same manner as if
convicted upon an indictment for
the misdemeanor of cutting, stabbing or wounding.

Where a prisoner is indicted for feloniously cutting and wounding, he will not be permitted to plead guilty to a common assault merely. He must plead to the felony, and if no evidence of the felony is offered he may be acquitted of the felony and found guilty of the assault on his own confession. Reg. v. Calvert, 3 C. & K. 201—Maule.

A., an under servant, who had lost his right arm, was beaten by B., an upper servant, for misconduct. A. took out a knife and wounded B.:—Held, on a trial for felonionsly wounding, that if A. did this in self-defence only he ought to be acquitted; but if A. used more violence than was necessary for that purpose he onght to be convicted of the misdemeanor of wounding only, under 14 & 15 Vict. c. 12, s. 5. Reg. v. Huntley, 3 C. & K. 142—Platt.

To an indictment for stabbing, was added a count for a common The trial had considerably advanced before this was discovered, and the judge allowed the case to proceed, and left it to the jury without noticing the count for The jury rethe common assault. turned a verdict of guilty, which was entered on the count for stabbing with intent to do grievous bodily harm. The judges held the conviction right. Reg. v. Jones, 8 C. & P. 776; 2 M. C. C. 94.

An indictment contained counts charging an assault, and unlaw-

fully and maliciously inflicting grievous bodily harm, and also a count for a common assault. the trial evidence was given that the prisoner inflicted serious bodily injuries upon the prosecutor. jury found the prisoner guilty of an aggravated assault without premeditation, and that it was done under the influence of passion:— Held, that the verdict was rightly entered on the record on the counts charging an assault and unlawfully and maliciously inflicting grievous bodily harm. Reg. v. Sparrow, 8 Cox, C. C. 393; Bell, C. C. 298; 30 L. J., M. C. 43.

Upon a count for assaulting, beating, wounding, and occasioning actual bodily harm against the statute, the prisoner may be convicted of a common assault. Reg. v. Oliver, 8 Cox, C. C. 384; Bell, C. C. 287; 30 L. J., M. C. 12.

Upon an indictment charging the defendants in the first count with inflicting grievous bodily harm; in the second count with unlawfully and maliciously cutting, stabbing and wounding; and in the third count with assaulting and occasioning actual bodily harm; the jury returned a verdict of guilty of a The chairman common assault. declined to take that verdict, on the ground that a common assault was not included in the indictment. and told the jury to reconsider their verdict. The jury then found the defendants guilty, and a verdict was entered of guilty of an assault occasioning bodily harm, whereupon the chairman sentenced the prisoners: — Held, that the first verdict ought to have been taken, and that the second ought not, and that the prisoners ought not to undergo the sentence; that there had been a mis-trial, and that a venire de novo should issue. Reg. v. Yeadon, 9 Cox, C. C. 91; 31 L. J., M. C. 70.

(e) By Resisting or Preventing Apprehension or Detainer of Persons.

On an indictment for stabbing, with intent to re-ist lawful apprehension, it must be shewn that the officer was either present or came armed with a warrant. Rex v. Dyson, 1 Stark. 246—Le Blanc.

The offence of maliciously cutting, with intent to resist lawful apprehension, is not committed where the party has no notice of the purpose of the officers. Rex v. Rick-

etts, 3 Camp. 68.

A prisoner was indicted for cutting and maining with intent to prevent his apprehension for an offence for which he was liable to be apprehended, to wit, for that he did violently assault and beat A. He was taken before the magistrates by the prosecutor, on a warrant directed to him for an assault on A., and ordered to find bail, which he refused to do, and whilst the commitment was being made out escaped. The prosecutor, by verbal directions of the magistrates, pursued the prisoner, and, in attempting to apprehend him, he was cut by him :-Held, well convicted, and that the offence was Rex v. Wilrightly described. liams, 1 M. C. C. 387.

A constable who had verbal directions from the magistrates to apprehend all persons playing at thimblerig, attempted to apprehend the prisoner and his companions playing at thimblerig in a public fair. The constable, with assistance, took one of the party; but the prisoner and the rest rescued him and got off. In the evening of the same day the constable found the prisoner in a publichouse, not having been able to find him before, and endeavoured to apprehend him, stating it was for what he had been doing at the fair. He escaped into a privy, and the constable called the prosecutor to

broke open the privy-door, and endeavoured to take him, who thereupon stabbed the prosecutor. A conviction for feloniously cutting and maiming was held wrong. Rex v. Gardener, 1 M. C. C. 390.

A conviction on an indictment for maliciously cutting a police officer, with intent to resist and prevent the arrest and detainer of a prisoner for a certain offence, for which he was liable by law to be apprehended and detained, viz., for committing damage and injury upon certain plants and roots in a garden, is good. Rew v. Fraser, 1 M. C. C. 419.

A gamekeeper, accompanied by his assistant, met four poachers on the highway, one carrying a gun, another a gun barrel, and the other two bludgeons. There had been previously two shots fired. gamekeeper said to his assistant, "Mind the gun," and the assistant laid hold of it, and then the gamekeeper called to another person; upon this three of the poachers knocked him down and stunned him, and when he came to himself he saw all of them near, and one said as they passed him, "D-n them, we have done them both," and one turned back and cut him on the left leg, and all then ran away. It was objected, first, that the wounding of the leg was the act of one alone, and there was no evidence to shew which of them it was ;-secondly, that, from the expressions used, it was evident that both were thought to be dead, and there could be no intent to murder; -and thirdly, that the prisoner being on the highway, the gamekeeper and his assistant had no right to interfere with them. The prisoners were convicted, and the judges held the conviction right. Rex v. Warner, 5 C. & P. 525; 1 M. C. C.

He escaped into a privy, and the constable called the prosecutor to his assistance, and together they be be being assistance, and together they be be being assistance.

convicted whose main and principal intent was to prevent his lawful apprehension, or, in order to effect the latter intent, he also intended to murder, or do grievous bodily harm. Rex v. Gillow, 1 M. C. C. 85; 1 Lewin, C. C. 57. See Rex v. Thompson, 1 M. C. C. 80; Rex v. Davis, 1 C. & P. 306.

A police-officer, having been assaulted by W., attempted, two hours afterwards, to take him into custody. W. resisted and wounded the officer:—Held, that the apprehension would not have been lawful, and that W. could not be convicted of wounding with intent to prevent his lawful apprehension. Reg. v. Walker, 2 C. L. R. 485; Dears. C. C. 358; 23 L. J., M. C. 123; 6 Cox, C. C. 371.

An indictment under 43 Geo. 3, c. 58, for cutting and maiming with intent to murder and disable, was not supported by evidence of a cutting with intent to produce a cutting with intent to produce a temporary disability in a person lawfully apprehending the prisoner until he could effect his own cscape. Rex v. Boyce, 1 M. C. C. 29.

In an indictment on 43 Geo. 3, c. 58, the intent laid in several counts was to murder, to disable, or to do some grievous bodily harm; the intent found by the jury was to prevent being apprehended:—Held, that the conviction was bad, for that, if the intent was to prevent the lawful apprehension of the prisoner, it should be laid so. Rex v. Duffin, R. & R. C. C. 365; 1 East, P. C. 437.

(f) By means of Gunpowder, Explosive Substances, or other Dangerous Things.

With Intent to Murder.]—By 24 & 25 Vict. c. 100, s. 12, "whoso-"ever, by the explosion of gun-"powder or other explosive substance, shall destroy or damage "any building with intent to com-"mit murder, shall be guilty of "felony, and, being convicted there-

"of shall be liable, at the discre"tion of the court, to be kept in
"penal servitude for life, or for any
"term not less than five years (27
"& 28 Vict. c. 47), or to be impris"oned for any term not exceeding
"two years, with or without hard
"labour, and with or without soli"tary confinement." (Former enactment, 9 & 10 Vict. c. 25, s. 2.)

Upon a charge of murdering a person named by means of explosive grenades, evidence of the death and wounds suffered by others at the same time, is admissible for the purpose of proving the character of the grenades. Reg. v. Bernard, 1 F. & F. 240—Campbell.

A witness being called to prove that he manufactured certain grenades, by which the death in question had been caused:—Held, that the name of the person who gave the order for them might be asked as a fact in the transaction, even though he had not then been shewn to be connected with the prisoner. Ib.

With Intent to Inflict Grievous Bodily Harm.  $-B_{\nabla}$  24 & 25 Vict. c. 100, s. 28, "whosoever shall un-"lawfully and maliciously, by the "explosion of gunpowder or other "explosive substance, burn, maim, " disfigure, disable, or do any griev-"ons bodily harm to any person, "shall be guilty of felony, and, "being convicted thereof, shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude for life, or for any term not "less than five years (27 & 28 "Viet. c. 47), or to be imprisoned "for any term not exceeding two " years, with or without hard la-"bour, and with or without soli-"tary confinement, and, if a male "under the age of sixteen years, "with or without whipping." (Former provision, 9 & 10 Vict. c. 25. s. 3.)

"mit murder, shall be guilty of By s. 29, "whosoever shall un-"felony, and, being convicted there- "lawfully and maliciously cause "any gunpowder or other explo-" sive substance to explode, or send " or deliver to or cause to be taken "or received by any person any "explosive substance or any other "dangerous or noxious thing, or "put or lay at any place, or cast " or throw at or upon or otherwise "apply to any person, any corro-"sive fluid or any destructive or "explosive substance, with intent "in any of the cases aforesaid to "burn, maim, disfigure, or disable "any person, or to do some griev-"ous bodily harm to any person, "shall, whether any bodily injury "be effected or not, be guilty of "felony." (Punishment the same as in the last section. Former provisions, 9 & 10 Vict. c. 25, s. 1; 7 Will. 4 & 1 Vict. c. 85, s. 5.)

Boiling water was a dangerous thing within the latter act. Reg. v. Crawford, 2 C. & K. 129—Rolfe.

A woman pouring boiling water over the face and into the ear of her husband while he was asleep, whereby he was temporarily blind, and permanently deaf on one side:

—Held, that she might be convicted of felony under 7 Will. 4 & 1 Vict. c. 85, s. 5. Ib.

By s. 30, "whosoever shall un-"lawfully and maliciously place or "throw in, into, upon, against, or "near any building, ship, or vessel, "any gunpowder or other explosive "substance, with intent to do any "bodily injury to any person, shall, " whether or not any explosion take "place, and whether or not any "bodily injury be effected, be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept "in penal servitude for any term "not exceeding fourteen years, and "not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour, and with or without soli-"tary confinement, and if a male "under the age of sixteen years,

"with or without whipping." (Former provision, 9 & 10 Vict. c. 25, s. 6.)

# (g) By setting Fire to or casting away Ships.

By 24 & 25 Viet. c. 100, s. 13, "whoseever shall set fire to any " ship or vessel, or any part thereof, " or any part of the tackle, apparel, " or furniture thereof, or any goods " or chattels being therein, or shall "cast away or destroy any ship or "vessel, with intent in any such "cases to commit murder, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than five " vears (27 & 28 Vict. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-"out hard labour, and with or "without solitary confinement." (Former enactment, 7 Will. 4 & 1 Vict. c. 89, s. 4.)

#### (h) Preventing Rescue from Shipwreck.

By 24 & 25 Vict. c. 100, s. 17, "whosoever shall unlawfully and " maliciously prevent or impede any "person, being on board of or hav-"ing quitted any ship or vessel "which shall be in distress or wreck-"ed, stranded, or cast on shore, in "his endeavour to save his life, or "shall unlawfully and maliciously "prevent or impede any person in "his endeavour to save the life "of any such person as in this "section first aforesaid, shall be "guilty of felony." (Punishment same as in last section. Former provision, 7 Will. 4 & 1 Viet. c. 89, s. 7.)

## (i) By other Means.

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By 24 & 25 Vict. c. 100, s. 15, "whosoever shall, by any means other than those specified in any "of the preceding sections of this "act, attempt to commit murder,

"shall be guilty of felony." (Punishment same as in the last but one preceding section.)

#### 7. By Spring Guns.

By 24 & 25 Viet. c. 100, s. 31, "whosoever shall set or place, or "cause to be set or placed, any " spring gun, man trap, or other en-"gine calculated to destroy human " life or inflict grievous bodily harm, "with the intent that the same or "whereby the same may destroy or "inflict grievous bodily harm upon "a trespasser or other person com-"ing in contact therewith, shall be "guilty of a misdemeanor, and, "being convicted thereof, shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude for the term of five years (27 " & 28 Vict. c. 47), or to be impris-"oned for any term not exceeding "two years, with or without hard "labour.

"And whosoever shall knowingly "and wilfully permit any such "spring gnn, man trap, or other en"gine, which may have been set or "placed in any place then being in, "or afterwards coming into, his "possession or occupation, by some "other person, to continue so set or "placed, shall be deemed to have "set and placed such gun, trap, or engine with such intent as afore-"said.

"Provided, that nothing in this "section contained shall extend to "make it illegal to set or place any "gin or trap, such as may have "been or may be usually set or "placed with the intent of destroy-"ing vermin."

"Provided also, that nothing in "this section shall be deemed to "make it unlawful to set or place, "or cause to be set or placed, or "to be continued set or placed, "from sunset to sunrise, any spring "gun, man trap or other engine "which shall be set or placed, or "caused or continued to be set or "placed, in a dwelling-house for the

"protection thereof." (Former provision, 7 & 8 Geo. 4, c. 18, ss. 1, 2, 3, 4.)

The plaintiff entered the defendant's garden at night, and without his permission, to search for a stray fowl, and, whilst looking closely into some bushes, he came in contact with a wire, which caused something to explode with a lond noise, knocking him down slightly injuring his face and eyes: -Held, in an action, that the defendant was not liable for this injury at common law, or in the absence of evidence that it was caused by a spring gnn or other engine calculated to inflict grievous bodily harm, under 7 & 8 Geo. 4, c. 18, s. Wootton v. Dawkins, 2 C. B., N. S. 412.

(8) Illtreating Children, Apprentices, Servants, Idiots and Helpless Persons.

#### (a) The Offence.

Statute.]—By 24 & 25 Vict. c. 100, s. 26, "whosoever, being le-"gally liable, either as a master or "mistress, to provide for any ap-" prentice or servant necessary food, " clothing, or lodging, shall wilfully "and without lawful excuse refuse " or neglect to provide the same, or "shall unlawfully and maliciously "do or cause to be done any bodily "harm to any such apprentice or "servant, so that the life of such "apprentice or servant shall be en-"dangered, or the health of such ap-" prentice or servant shall have been "or shall be likely to be, permanent-"ly injured, shall be guilty of a " misdemeanor, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept in " penal servitude for the term of five "years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-"out hard labour. (Former provision, 14 & 15 Vict. c. 11, s. 1.) By s. 27, "whosoever shall un"lawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be per-manently injured, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour."

Children and Helpless Persons.]—
It is a misdemeauor to refuse or neglect to provide sufficient food or other necessaries for any infant of tender years, nnable to provide for and take care of itself (whether such infant is a child, an apprentice, or a servant whom the party is obliged by duty or contract to provide for), so as thereby to injure his health. Rex. v. Friend, R. & R. C. C. 20—Bayley. And see Rex v. Squire, 1 Russ. C. & M. 80, 678.

A single woman, the mother of an infant child, was indicted for neglecting to provide it with sufficient food, the indictment alleging that she was able, and had the means so There was no evidence of to do. the actual possession of means by the mother; but it was proved that she could have applied to the relieving officer of the union, and that if she had so applied, she would have been entitled to and would have received relief adequate to the due support and maintenance of herself and child:—Held, that the allegation in the indictment was not supported by this evidence. Reg. v. Chandler, Dears. C. C. 453; 1 Jur., N. S. 429; 24 L. J., M. C. 109; 3 C. L. R. 680.

If parents have not the means of providing proper food and nourishment for their infant children who are incapable of taking care of themselves, it is their duty to apply

for the assistance provided by means of the poor laws. Reg. v. Mabbett, 5 Cox, C. C. 339.

A married woman who, having a child under such circumstances, wilfully neglects for several days going to the union for the purpose of getting support for it, she knowing that such neglect is likely to cause the child's death, is guilty of

manslaughter. Ib.

Where any person undertaking the duty of supplying an infant with proper food and clothing, and furnished with the means of discharging that duty properly, wilfully neglects to do so, with an intention to cause the death of the child, or to do it some grievous injury, and the child dies in consequence of such neglect, such person is guilty of murder. Where the neglect is culpable only, and not malicious, such person is guilty of manslaughter. Where a parent supplies suffi-cient food and clothing to another for the purpose of administering to his child, and that other person wilfully withholds it from the child, and the parent is conscious that it is so withheld, and does not interfere, and the child dies for want of proper food and clothing, the parent is guilty of manslaughter. Bubb, 4 Cox, C. C. 455.

A married woman cannot be convicted of the murder of her illegitimate child three years old, by omitting to supply it with proper food, unless it is shewn that her husband supplied her with food to give to the child, and that she wilfully neglected to give it. Rex v. Saunders, 7 C. & P. 277—Alderson.

A count charged a married woman with the murder of her illegitimate child of three years old, by omitting to supply it with sufficient food, and also by beating; it was not shewn that her husband had supplied her with food to give to the child:—Held, that this count could not be supported. *Ib*.

An unmarried woman, eighteen

years of age, who usually supported herself by her own labour, being about to be confined, returned to the house of her stepfather and her mother. She was taken in labour (the stepfather being absent at his work), and in consequence of the mother's neglect to use ordinary diligence in procuring the assistance of a midwife, the daughter died in her confinement. There was no proof that the mother had any means of paying for the services of a midwife:—Held, that no legal duty was cast upon the mother to procure a midwife, and therefore that she could not be convicted of the manslaughter of her daughter. Reg. v. Shepherd, 9 Cox, C. C. 123; L. & C. 147; 8 Jur., N. S. 418; 31 L. J., M. C. 102; 10 W. R. 297; 5 L. T., N. S. 687.

On an indictment for the murder of an aged and infirm woman, by confining her against her will, and not providing her with meat, drink, clothing, firing, medicines and other necessaries, and not allowing her the enjoyment of the open air, in breach of an alleged duty; if the jury thinks that the prisoner was guilty of wilful neglect, so gross and wilful that they are satisfied he must have contemplated her death, he will be guilty of murder; but if they only think that he was so careless that her death was occasioned by his negligence, though he did not contemplate it, he will be guilty of manslaughter. Reg. v. Marriott, 8 C. & P. 425—Patteson.

If a person does an act towards another who is helpless, which must necessarily lead to the death of that other, the crime amounts to murder; but if the circumstances are such that the person could not have been aware that the result would be death, that would reduce the crime to manslanghter, provided that the death was occasioned by an unlawful act, but not such an act as shewed a malicious mind. Reg. v.

Ill-treating Children. ] — When from a conscientious religious conviction that God would heal the sick, and not from any intention to avoid the performance of their duty, the parents of a sick child refuse to call in medical assistance, though well able to do so, and the child consequently dies, it is not culpable homicide. Reg. v. Wagstaffe, 10 Cox, C. C. 530—Willes.

A parent who wilfully withholds necessary food from his child, with the wilful determination by such withholding to cause the death of the child, is guilty of murder if the Reg. v. Conde, 10 Cox, child dies.

C. C. 547—Channell.

A parent who has the means to supply necessaries, but who negligently though not wilfully, withholds from a child food, which, if administered, would sustain its life, and the child consequently dies, is guilty of manslaughter.

In an indictment against a parent for neglecting to provide sufficient food and clothing for a child of tender years, for whom he is bound by law to provide, it is not necessary to aver that the parent was, at the time of the alleged offence, of sufficient ability to perform the duty so imposed upon him. Reg. v. Ryland, 17 L. T., N. S. 219; 1 L. R., C. C. 99; 37 L. J., M. C. 10; 10 Cox, C. C. 569; 16 W. R. 280.

Deserting Children. |—It is an indictable offence to expose a person to the inclemency of the weather. Rex v. Ridley, 2 Camp, 640, 653— Lawrence.

A. was convicted of the manslaughter of an infant female child, on an indictment which stated the death to have been caused by exposure, whereby the child became mortally chilled, frozen and benumbed:—Held, that as the death was attributable to an act of misfeasance, it was necessarily implied that the child was of such tender Walters, Car. & M. 164-Coltman. | age and feebleness as to be incompetent to take care of herself. Reg. v. Waters, T. & M. 57; 1 Den. C. C. 356; 2 C. & K. 864; 13 Jur. 130; 18 L. J., M. C. 53.

An indictment charging a party with abaudoning a child with the intent to burden a particular parish with its maintenance, is not supported by proof that the child was deposited by the accused in a parish in a secret place where it was not likely to be found. Reg. v. Renshaw, 11 Jur., 615; 2 Cox, C. C. 385—Parke.

A female abandoned her infant child, having first deposited it in the bottom of a dry ditch among some nettles, by which it was not hurt; and, in consequence of being shortly afterwards found by other persons, had not experienced any inconvenience from the exposure:—Held, that she could not be convicted either of an assault with intent to murder the child, or of a common assault. Ib.

Indictment charging A. with unlawfully leaving a child of a month old, of which she had the care, in a highway in a parish, with intent to burden the parish with the maintenance of the child, is bad, for not negativing the settlement of the child in the parish, and for not alleging any injury done to the child by the act of A. Reg. v. Cooper, 1 Den. C. C. 459; 2 C. & K. 876; T. & M. 125; 13 Jur. 502; 18 L. J., M. C. 168; 3 Cox, C. C. 559.

An indictment charging that a woman deserted her bastard child with intent to throw the burden of its maintenance on the parish, is bad, without an averment that the child had sustained any injury by the abandonment, or that the woman had the means of supporting the child. Reg. v. Hogan, 2 Den. C. C. 277; T. & M. 610; 15 Jur. 805; 20 L. J., M. C. 219; 5 Cox, C. C. 255.

If a woman, in breach of her maternal duty, wilfully abandons her child of too tender years to provide

for itself, she is not indictable at common law, unless her abandonment causes an injury to the health of the child. *Reg.* v. *Phillpot*, Dears. C. C. 179; 17 Jur. 399; 22 L. J., M. C. 113; 6 Cox, C. C. 140.

Evidence "that the child had suffered injury, but not to any serious extent," does not sufficiently support an averment in the indictment that the health of the child had been greatly and materially injured. *Ib*.

If a woman leaves her child, a young infant, at a gentleman's door, or other place where it is likely to be found and taken care of, and the child dies, it will be manslaughter cnly; but if the child is left in a remote place, where it is not likely to be found, e. g. on a barren heath, and the death of the child ensues, it will be murder. Reg. v. Walters, Car. & M. 164—Coltman.

Apprentices and Servants.]—If a master, by premeditated negligence, or harsh usage, causes the death of his apprentice, it is murder. Rex v. Self, 1 Leach, C. C. 137; 1 East, P. C. 226.

An indictment lies against a master for not providing sufficient food and sustenance for a servant, whereby she became sick and emaciated. Rea v. Ridley, 2 Camp. 650—Lawrence.

A master is not by law bound to provide medical advice for his servant; but with respect to an apprentice, a master is bound, during the illness of his apprentice, to provide him with proper medicines. Reg. v. Smith, 8 C. & P. 153—Vaughan and Patteson.

A girl of sixteen is not an infant of tender years, and therefore her master and mistress, who have not kept her under duress, are not guilty of a misdemeanor in not supplying her with sufficient food and nourishment, whilst in their service. Anon., 5 Cox, C. C. 279—Coleridge and Cresswell.

Where a master culpably neg-

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lects to supply proper and sufficient | food and lodging to a servant during a time when the servant is reduced to and in such an enfeebled state of body and mind as to be helpless, and unable to take care of himself, or is under the dominion and restraint of the master, and unable to withdraw himself from his control, and the servant's death is caused or accelerated by such neglect, the master is guilty of manslaughter. Reg. v. Smith, L. & C. 607; 10 Cox, C. C. 82; 11 Jur., N. S. 695; 34 L. J., M. C. 153; 13 W. R. 816; 12 L. T., N. S. 608.

Idiots.]—If one has his idiot brother, who is helpless, as an inmate in his house, and omits to supply him with proper food, warmth, &c., he is not indictable for the omission. Rex v. Smith, 2 C. & P. 449—Bur-

rough.

A count stating that the defendant did, whilst S., being a person of unsound intellect and incapable of taking care of himself, was under the care, custody and control of the defendant, keep, confine and imprison S., is bad, for want of a positive avernment that S. was under the care, custody and control of the defendant. Reg. v. Pelham, 8 Q. B. 959; 10 Jur. 659; 15 L. J., M. C. 105.

A. was convicted on an indictment under 16 & 17 Vict. c. 96, s. 9, which charged that he, having the care and charge of his wife, a lunatic, did abuse and ill-treat lier:—Held, that he was not a person having the care or charge of a lunatic within the meaning of the statute, inasmuch as its provisions were not intended to apply to persons whose care or charge arises from natural duty. Reg. v. Rundle, Dears. C. C. 482; 1 Jur., N. S. 430; 24 L. J., M. C. 129; 6 Cox, C. C. 549; 3 C. L. R. 659.

But a man who has voluntarily taken upon himself the care of a lunatic brother in his own private house

is a person having the care and charge of a lunatic within 16 & 17 Vict. c. 96, s, 9, and is liable to be indicted for ill-treating him. Reg. v. Porter, L. & C. 394; 9 Cox, C. C. 449; 10 Jur., N. S. 547; 33 L. J., M. C. 126; 12 W. R. 718; 10 L. T., N. S. 306.

Prisoners of War.]—It is an indictable offence wilfully and maliciously to snpply prisoners of war with unwholesome food not fit to be eaten by man. Rex v. Treeve, 2 East, P. C. 821.

Duty of Overseers.]—It is an indictable offence in an overseer to neglect to supply medical assistance, when required, to a pauper labouring under dangerous illness, although he was not in the workhouse, nor had, previously to his illness, received or stood in need of parochial relief. Rex v. Warren, R. & R. C. 48, n. And see Hays v. Bryant, 1 H. Bl. 253; Rex v. Saunders, 7 C. & P. 277.

But an overseer is not indictable for not relieving a pauper, unless there is an order for his relief; except in case of immediate emergency, when there is not time to get an order. Rex v. Meredith, R. & R. C. C. 46. But see contra, Rex v. Booth, R. & R. C. C. 47, n.; and 4 & 5 Will. 4, c. 76, ss. 52, 54.

## (b) Indictment.

An indictment charging a feme covert, living separately and apart from her husband, with neglecting and refusing to provide necessary meat and drink for her servant, and keeping her without sufficient warmth, whereby she became sick and emaciated, is insufficient, in not alleging that the servant was of tender years, and under the dominion and control of the defendant. Rex v. Ridley, 2 Camp. 650—Lawrence.

So an indictment against a master for not providing necessaries for his apprentice, ought to state that the apprentice was of tender years, and unable to provide for himself. Rex v. Friend, R. & R. C. C. 20.

An indictment against a woman for manslaughter, in neglecting to supply an infant of tender age with sufficient food, is bad, if it does not state a duty to supply the child with food; but, if the indictment charges that the person not supplied with food was imprisoned by the party accused, that sufficiently shows the duty to supply food. Reg v. Edwards, 8 C. & P. 611—Patteson.

A count charged that a lunatic was the illegitimate child of the defendant, a female, who had means for the comfortable support and maintenance of both, whereupon it became her duty to take proper care of him, but that she did not take proper care of him, but kept and confined him in a dark, cold and unwholesome room; neglected to provide him with proper clothing; permitted him to become dirty; allowed the room to become foul, so as to cause unwholesome smells; and kept him without proper air, warmth and exercise necessary for his health, to his damage and peril. Judgment arrested: first, because no duty was shewn, and secondly, because it was not shewn that the conduct of the defendant had, or must have occasioned actual injury. Reg. v. Pelham, 8 Q. B. 959; 10 Jur. 659; 15 L. J., M. C. 105.

### (c) Evidence.

An indictment for manslaughter stated in a first count, that the deceased was the apprentice of the prisoner, and that it was the duty of the prisoner to provide the deceased with proper nourishment and medicine, and charged the death to be from neglect. A second count charged that the deceased, "so being such apprentice as aforesaid," was killed by the prisoner by over-work and beating. No evidence was given of any indenture, but a witness proved that the prisoner told him that the | " ment for manslaughter to charge

deceased was his apprentice:—Held, that this was sufficient proof of the allegation of the apprenticeship in the second count, but not of that in Reg. v. Crumpton, the first count. Car. & M. 597—Patteson.

Semble, that where the charge is, that the prisoner received a child as an apprentice, an indictment, importing that a former master, with the child's consent, bound the child to the prisoner, will be sufficient evidence of the receiving as an apprentice, though such indenture is executed by a stranger as trustee for the former master, and not in the former master's name. Rex v. Friend, R. &. R. C. C. 20.

#### Injuring Persons by Wanton or Furious Driving.

By 24 & 25 Viet. c. 100, s. 35, "whosoever, having the charge of "any carriage or vehicle, shall, by " wanton or furious driving or racing, " or other wilful misconduct, or by "wilful neglect, do or cause to be "done any bodily harm to any per-"son whatsoever, shall be guilty of " a misdemeanor, and, being convicted thereof, shall be liable, at the " discretion of the court, to be im-"prisoned for any term not exceed-"ing two years, with or without hard labour." (Former provision, 1 Geo. 4, c. 4.)

#### 10. Indictment for Murder and Manslaughter.

Form.]—By 24 & 25 Viet. c. 100, s. 6, "in any indictment for murder or "manslaughter, or for being an ac-"cessory to any murder or man-"slaughter, it shall not be necessary "to set forth the manner in which " or the means by which the death " of the deceased was caused, but it " shall be sufficient in any indictment "for murder to charge that the de-"fendant did feloniously, wilfully "and of his malice aforethought "kill and murder the deceased; and "it shall be sufficient in any indict"that the defendant did feloniously

"kill and slay the deceased;

"And it shall be sufficient in any "indictment against any accessory "to any murder or manslaughter to "charge the principal with the mur"der or manslaughter (as the case "may be) in the manner hereinbe "fore specified, and then to charge "the defendant as an accessory in "the manner heretofore used and ac"customed." (Similar to former provision, 14 & 15 Vict. c. 100, s. 4.)

A coroner's inquisition is an indictment, within the above section, and it is, therefore, unnecessary to set forth therein the manner in which, or the means by which, the death of the deceased was caused. Reg. v. Ingham, 5 B. & S. 257; 10 Jur., N. S. 968; 33 L. J., Q. B. 183; 12 W. R. 793; 10 L. T., N. S. 456; 9 Cox, C. C. 508.

By 9 & 10 Vict. c. 62, "it shall "not be necessary in any indictment or inquisition for homicide to al"lege the value of the instrument "which caused the death of the de"ceased, or to allege that the same "was of no value."

On an indictment for murder against several, one cannot be convicted of an assault committed on the deceased in a previous scuffle, such assault not being in any way connected with the cause of death. Reg. v. Phelps, 2 M. C. C. 240; Car. & M. 180.

The indictment must state, that the act by which death ensued was done of malice aforethought. Rex v. Nicholson, 1 East, P. C. 346.

In an indictment for manslaughter it is not necessary that it should specifically charge that it was by an act of omission. Reg. v. Smith, 11 Cox, C. C. 210—Lush.

Manner and Means of Death. Before these Enactments.]—An indictment for murder must have set forth particularly the manner of the death, and the means by which it was effected. Rex v. Sharwin, 1 East, P. C. 341, 421.

An indictment for murder, which stated wounds as contributing to the death, need not have stated their length, depth, or breadth. Rex v. Mosley, 1 M. C. C. 97; 1 Lewin, C. C. 189; S. P., Rex v. Tomlinson, 6 C. & P. 370.

An indictment for murder must state that the prisoner gave the deceased a mortal wound. Rex v. Lad, 1 Leach, C. C. 96.

Where death proceeded from suffocation, by the swelling up of the passage of the throat, and such swelling proceeded from wounds occasioned by forcing things into the throat, the statement might be, that the things were forced into the throat, and the deceased thereby suffocated; and it was not necessary to mention the immediate cause of suffocation, namely, the swelling of the throat. Rex v. Tye, R. & R. C. C. 345.

A. was charged with suffocating B. by placing both her hands about the neck of B:—Held, that she might be convicted, if B. was suffocated in any manner, either by A. or by any other person in her presence, she being privy to the commission of the offence. Rex v. Culkin, 5 C. & P. 121—Park, Parke, and Bolland.

If the death of a deceased was charged to be by suffication, by placing the hand on the mouth of the deceased, this allegation was made out, if the jury was satisfied that any violent means were used to stop the respiration of the deceased. Rex v. Waters, 7 C. & P. 250—Denman.

In an indictment for murder, an allegation that it was committed "with a certain sharp instrument, to the jurors aforesaid unknown," was sufficiently certain. Rex v. Grounsell, 7 C. & P. 788—Parke.

An indictment, which stated the death to be by striking and beating

the deceased with a piece of brick, was not supported by proof that the prisoner knocked him down with his fist, and that the death was caused by the deceased striking his head by falling on a piece of brick, in consequence of the blow. Rex v. Kelly, Car. C. L. 75; 1 M. C. C. 113; 1 Lewin, C. C. 193; Rex v. Wrigley, 1 Lewin, C. C. 127.

Or by proof that he knocked him down by a blow upon the head, and that he was killed by a mortal wound received by falling on the ground. Rex v. Thompson, Car. C. L. 75; 1 M. C. C. 139; 1 Lewin,

C. C. 194.

An indictment charging that the prisoner a musket loaded with gunpowder and a leaden bullet against, and upon M. G., feloniously, &c., "did shoot, discharge, and send forth; and that he, with the leaden bullet aforesaid, out of the musket aforesaid, then and there by the force of the gunpowder so shot, discharged, and sent forth as aforesaid, G. M. did strike," &c., was good, and the words "send forth," and the other added words which did not occur in the usual form, might be rejected as surplusage. Reg. v. Stokes, 2 C. & K. 536; 17 L. J., M. C. 116—C. C. R.

In an indictment for murder by poisoning, it is sufficient, after alleging the administering the deadly poison, and the mortal sickness occasioned thereby, to aver "of which said mortal sickness and distemper the said E. S. died." Reg. v. Sandys, 2 M. C. C. 227; Car. & M. 345.

An indictment for manslaughter that J. E. caused R. D. to become mortally sick, of which mortal sickness, especially of a mortal congestion of the lungs and heart, occasioned by the means aforesaid, he died, properly charged a death from a mortal congestion caused by those means. Reg. v. Ellis, 2 C. & K. 470—Tindal and Rolfe.

In a count for murder, the death | blow with a hammer, or of a push was stated to be by a blow of a against the lock or the key of a

stick, and, in another count, by the throwing of a stone. The jury found the prisoners guilty of manslaughter, generally, on both counts, and the judges held the conviction right. Reg. v. O'Brian, 2 C. & K. 115; 1 Den. C. C. 9.

A. and B. were indicted for the murder of C., by shooting him with a gun. In the first count A. was charged as principal in the first degree, B. as present, aiding and abetting him. In the second count, B. as principal in the first degree, A. as aiding and abetting. The jury convicted both, but said that they were not satisfied as to which fired the gun:-Held, first, that the jury was not bound to find the prisoners guilty of one or other of the counts only. Reg. v. Downing, 1 Den. C. C. 52; 2 C. & K. 382.

Held, secondly, that, notwithstanding the word "afterwards" in the second count, both the counts related substantially to the same person killed and to one killing, and might have been transposed without any alteration of time or meaning.

Th

An indictment charged A. with giving a mortal wound to G. on the 27th of May, of which wound he died on the 29th of May; and that Y. and Z., on the day and year first aforesaid, were present, aiding and abetting A. the felony aforesaid to do and commit. The jury found all the prisoners guilty of manslaughter; and it was objected for Y. and Z., that the felony of A. was not complete till the death of G.; but the judges held the conviction right. Reg. v. O'Brian, 2 C. & K. 115; 1 Den. C. C. 9.

A. was indicted for the manslaughter of B. by a blow of a hammer. No proof was given of the striking of any blow, only of a scuffle between the parties. The appearance of the injury was consistent with the supposition, either of a blow with a hammer, or of a push against the lock or the key of a door:—Held, that if it was occasioned by a blow with a hammer, or any other hard substance held in the hand, it was sufficient to support an indictment; but otherwise, if it was the result of a push against the door. Rex v. Martin, 5 C. & P. 128—Park and Parke.

In an indictment for manslaughter, it was not necessary to allege the causes merely natural which conduced to the death of the party; it was sufficient to allege truly the act with which the prisoner was charged, if that act accelerated the death. Rex v. Webb, 1 M. & Rob. 405; 2 Lewin, C. C. 196—Lyndhurst.

Name of Deceased.]—If the name of the party killed is not known, it may be alleged to be a certain person to the jurors unknown. Rex v. Clark, R. & R. C. C. 358.

A bastard must not be described by his mother's name, till he has gained that name by reputation. Ib.

Where a deceased illegitimate child had not been baptized, but the mother had, on two occasions, called it Mary Anne, a witness stating that the putative father had said he was a Baptist:—Held, that it was rightly described as a female child whose name was unknown. Rex v. Smith, 6 C. & P. 151; 1 M. C. C. 402; S. P., Rex v. Poulton, 5 C. & P. 329.

In an indictment for the murder of a bastard child, the absence of a name is sufficiently accounted for by the child being described as "lately before born of the body of J. H." Reg. v. Hogg, 2 M. & Rob. 380—Denman.

An indictment for child murder is bad for not stating the name of the child or accounting for the omission: no conviction for concealing the birth can take place. Reg. v. Hicks, 2 M. & Rob. 302—Coleridge and Maule.

An illegitimate child, six weeks the jurors, overruled at the trial, on old, baptized on a Sunday, and the ground that there was no pre-

from that day to the following Tuesday called by its name of baptism and its mother's surname, is sufficient evidence to warrant the jury in finding that the deceased was properly described by those names. Reg. v. Evans, 8 C. & P. 765—Erskine.

An indictment charged the murder of Eliza Waters. The deceased was the illegitimate child of the prisoner, whose name was Ellen Waters; and a witness said, on the trial: "The child was called Eliza; I took it to be baptized, and said it was Eleanor Waters's child":—Held, that it was not sufficient proof that the surname of the deceased was Waters. Rex. v. Waters,

1 M. C. C. 457. C. was indicted for manslaughter, in killing "a woman, whose name to the jurors is unknown." C. cohabited with the woman, and sometimes said that she was his wife, and sometimes that she was not; and none of the witnesses had heard her called by any name: -Held, that if the jury was satisfied that the deceased was not the wife of the prisoner, and that the name of the deceased could not be ascertained by any reasonable diligence, the description of the deceased was proper; but that, if the jury should think that the deceased was the wife of the prisoner, the description was bad; for, although there was no evidence of her christian name, she was entitled to the surname of C., as being that of her husband. Reg. v. Compbell, 1 C. & K. 82—Erskine.

Indictment stated, that the prisoner, a single woman, on the 27th of August, 1844, brought forth a male child alive; that she afterwards, to wit, on the day and year aforesaid, killed this child. Objection, that the indictment ought to have stated the name of the child, or that its name was unknown to the jurors, overruled at the trial, on the ground that there was no me-

sumption, from the mere fact of birth, that the child had a name, it being a bastard; that the indictment afforded no presumption of its having acquired a name by reputation or baptism; that an averment that the name was unknown implied the acquisition of some name:

—Conviction held right. Reg. v. Willis, 1 Den. C. C. 80; 1 C. & K. 722.

An indictment for murder of a bastard child, described as Harriet Stroud, is not sustained by proof of a child christened Harriet, and only called by that name, though the mother's name was Stroud. The proper description is Harriet. A child "whose name is to the jurors unknown," is not good, because the name of Harriet was known. Reg. v. Stroud, 2 M. C. C. 270; 1 C. & K. 187.

"Not named," is a good description of an unbaptized infant child in an indictment for its murder. Reg. v. Waters, 2 C. & K. 864; 1 Den. C. C. 356; T. & M. 57; 13 Jur. 130; 18 L. J., M. C. 50.

But "not baptized" would be insufficient. *Ib. S. P.*, *Reg.* v. *Biss*, 8 C. & P. 773.

Amendment.]—A woman, charged with the murder of her husband, was described as A., the wife of J. O., late of the parish of S., in the county of W., labourer. The judge ordered this to be amended, by striking out the word wife, and inserting the word widow. Reg. v. Orchard, 8 C. & P. 565—Abinger.

11. Declarations in Articulo Mortis.

When admissible.]—Nothing can be evidence in a declaration in articulo mortis which would not be so if the party was examined. Rex v. Sellers, Car. C. L. 233.

It is a general rule in criminal cases, that dying declarations are admissible only where the death of the deceased is the subject of the

charge, and the circumstances of the death are the subject of the dying declaration; therefore, where a defendant had been convicted of perjury, and obtained a rule nisi for a new trial, pending which he shot the prosecutor, and on shewing cause against the rule for a new trial, an affidavit of the dying declarations of the prosecutor, relating to the transaction out of which the prosecution for perjury arose, was produced:-Held, that it was inad-Rex v. Mead, 4 D. & R. missible. 120; 2 B. & C. 605.

Dying declarations are admissible only where the death of the deceased is the subject of the charge, and the circumstances of the death the subject of the dying declaration. Reg. v. Hind, Bell, C. C. 253; 8 Cox, C. C. 300; 6 Jur., N. S. 514; 29 L. J., M. C. 147; 8 W. R. 421; 2 L. T., N. S. 253.

Therefore, on an indictment for feloniously using certain instruments upon the person of a woman with intent to procure a miscarriage, her dying declaration is inadmissible. *Ib*.

The declarations of a deceased made on the day he was wounded, and when he believed he should not recover, are admissible, though he did not die until eleven days afterwards; and though the surgeon did not think his case hopeless, and continued to tell him so until the day of his death. Rex v. Mosley, 1 M. C. C. 97; 1 Lewin, C. C. 79.

To render the declaration of the deceased admissible on a trial for manslaughter, it must have been made by him under an impression of almost immediate dissolution; and it is not enough that the deceased should have thought that he should ultimately never recover. Rex v. Van Butchell, 3 C. & P. 629—Hullock and Littledale.

A dying declaration is equal, in point of sanction, to an examination on oath, but the opportunity of investigating the truth is very different. A hton's case, 2 Lewin, C. C. 147—Alderson.

Whether or not dying declarations were made under an apprehension of danger, must be determined by the judge, in order to receive or reject the evidence; and not by the jury after the evidence is received. Rev v. John, 1 East, P. C. 357; S. P., Rev v. Wellbourn, 1 East, P. C. 358; Rev v. Hucks, 1 Stark, 523; 1 Leach, 503, n.

The apprehension of danger may appear either from the express declaration of the deceased at the time, or may be inferred from the state of the wound, or illness, or other circumstances indicating the same. Ib.

The declarations of a deceased person are evidence, though at the time they were made the deceased thought herself better, where she had uniformly said, both before and after they were made, and up to the time of her death, that she knew she should die. Rex v. Tinkler, 1 East, P. C. 354.

Any hope of recovery, however slight, existing in the mind of a deceased at the time of his making a declaration, will render it inadmissible as a declaration in articulo mortis; but where a person knew that he must die, and the magistrate, previously to his making the declaration, desired him, as a dying man, to tell the truth, and he replied that he would:—Held, that his declaration was admissible. Rew v. Hayward, 6 C. & P. 157—Tindal.

A boy between ten and eleven years of age was mortally wounded, and died the next day. On the evening of the day on which he was wounded, he was told by a surgeon that he could not recover. The boy made no reply, but appeared dejected. It appeared from his answers to questions put to him, that he was aware that he would be punished hereafter if he said what was untrue:—Held, that a declara-

tion made by him at this time was receivable in evidence on the trial of a person for killing him, as being a declaration in articulo mortis. Reg. v. Perkins, 9 C. & P. 395.

In order to render a declaration in articulo mortis admissible in a case of manslaughter, it is not necessary to prove expressions of the deceased, that he was in apprehension of almost immediate death; but the judge will consider, from all the circumstances, whether the deceased had or had not any hope of recovery. Rex v. Bonner, 6 C. & P. 386.

On the question whether a declaration of a deceased person is admissible as a declaration in articulo mortis, the judge will consider whether the conduct of the deceased was that of a dying person, such as whether he gave directions respecting his funeral, his will, &c., and not merely the expressions he used, as to whether he thought he should or should not recover. Rex v. Spilsbury, 7 C. & P. 187—Coleridge.

It is no objection against a declaration in articulo mortis that it was made in answer to questions put to the deceased by the surgeon, and not a continuous statement made by the deceased. Rev v. Fagent, 7 C. & P. 238—Gaselee.

The deceased asked, "Shall I recover"; the surgeon said, "No." The patient grew better, but relapsed, and then repeated the question. The surgeon said, "I think you will not recover." The deceased said, "I think so, too." It was after this conversation, but not immediately, that the declaration which was proposed to be given in evidence was made:—Held, admissible. Ashton's case, 2 Lewin, C. C. 147—Alderson.

Statements by a deceased person who at the time thought he was dying, and had no hope of recovering, are admissible as dying declarations. Reg. v. Howell, 1 Den. C. C. 1; 1 C. & K. 689.

It is not sufficient that the person

making declarations was dying, to constitute those declarations evidence, unless the deceased was clearly and expressly warned that he could not live, or unless he had expressed his knowledge that he was dying. Reg. v. Mooney, 5 Cox, C. C. 318.

Upon a trial for manslaughter, it was proved that the deceased, then being in such a state from the injuries he had received that it was impossible he could recover, and in fact death ensued eleven days afterwards, made a declaration, concluding with these words:-"I have made this statement, believing I shall not recover." On the same day, and shortly before making the declaration, he had stated: —"I have seen the surgeon, and he has given me some little hope that I am better; but I do not myself I shall ultimately recover." It was also proved, that on the occasion of this conversation he had said that he could not recover: -Held, that the statement being made under a belief of impending death, was properly received as a dying declaration. Reg. v. Reaney, Dears. & B. C. C. 151; 3 Jur., N. S. 191; 26 L. J., M. C. 43; 7 Cox, C. C. 209.

A statement made by a deceased person, inculpating one who was on his trial for the murder of the deceased, if made under circumstances and after expressions which indicated a sense of impending danger of death, is admissible as a dying declaration. Reg. v. Whitworth, 1 F. & F. 382—Watson.

A dying declaration is admissible, if the declarant conceives himself to be past recovery, although the surgeon attending him may believe him to be progressing favourably. Reg. v. Peel, 2 F. & F. 21—Willes.

A dying declaration of a deceased cannot be admitted by the judge merely from his own notion of the nature of the wound as described (without any evidence that the de-

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ceased, at the time, believed himself about to die), unless, at all events, it is shown to have been such as must necessarily have caused death in a short time, and such as all men reasonably would suppose to be so. Reg. v. Cleary, 2 F. & F. 850—Erle.

To render a statement admissible as a dying declaration it is not enough that it appears that the person making it was under the impression that death must ultimately ensue, but it is necessary that it should appear that the person was conscious at the time that death was actually imminent. Reg. v. Forester, 4 F. & F. 857—Byles.

It is no objection to the admissibility of a dying declaration that it was made in answer to leading questions. *Reg.* v. *Smith*, L. & C. 607.

An examination of a man touching injuries which he had received from the prisoner, if subsequently, on the death of the injured man from the injuries he has received, appended to a caption charging the prisoner with his murder, is inadmissible in evidence on that charge, although it may be admissible as a dying declaration. Reg. v. Clarke, 2 F. & F. 2—Wightman.

In order that a dying declaration may be admissible against a prisoner, it is not sufficient that the deceased had no hope of recovery, but he must be aware of the immediate approach of death, so that no terrestrial considerations may have any weight with the deceased in making such statement. Reg. v. Forester, 10 Cox, C. C. 368; 4 F. & F. 857—Byles.

A magistrate's clerk administered an oath to a dying person, and she made a statement. He asked her if she felt she was likely to die? She said, "I think so." He said, "Why?" She replied, "From the shortness of my breath." He said, "Is it with the fear of death before you that you make these statements?" and

added; "Have you any present hope of your recovery?" She said, " None." He then proceeded to write out the deposition, and when finished read it to her, and asked her to correct any mistake that he might have made. She said, "No hope, at present, of my recovery," and he then inserted those words: -Held, that the declaration was inadmissible, as the words "at present," introduced by the deceased, were a qualification of her previous statement that she had no hope of recovery. Reg. v. Jenkins, 20 L. T., N. S. 372; 17 W. R. 621; 38 L. J., M. C. 82; 1 L. R. C. C. 187; 11 Cox, C. C. 250.

In order to render a statement of a deceased person, not on cath, evidence, the prosecution must shew that such person at the time of making the statement was distinctly aware of the approach of death, and had no hope of possible recovery. Reg. v. Mackay, 11 Cox, C. C. 148—Lush.

When not Admissible.]—If the deceased thought she should recover at the time the declarations were made, they ought not to be received. Rex v. Welbourn, 1 East, P. C. 358; 1 Leach, C. C. 503, n.

In murder, the declarations of the deceased, after the mortal wound is given, may be received, though the larty did not express any apprehension of appreaching dissolution, but the examination of such a person taken by a magistrate, extrajudicially, cannot be received. Rex v. Woodcock, 1 Leach, C. C. 500; 1 East, P. C. 354; S. P., Rex v. Dingler, 1 Leach, C. C. 504, n.; 1 East, P. C. 357.

Where the deceased asked his surgeon if the wound was necessarily mortal, and on being told that recovery was just possible, and that there had been an instance where a person had recovered after such a wound, he said, "I am satisfied," and after this he made a statement:

—Held, that it was not admissible as a declaration in articulo mortis, as it did not appear that the deceased thought himself at the point of death, for, being told that the wound was not necessarily mortal, he might still have a hope of recovery. Rev v. Christie, Car. C. L. 232—Abbott and Park.

A person who was told by the surgeon that she would never recover said, that she "hoped he would do what he could for her, for the sake of her family." He again told her that there was no chance of her recovery: — Held, that this shewed such a degree of hope in her mind, as to render a statement she then made inadmissible as a declaration in articulo mortis. Rex v. Crockett, 4 C. & P. 544—Bosanquet.

In trials for robbery, the dying declarations of the party robbed have been held to be inadmissible. Rex v. Lloyd, 4 C. & P. 233.

Declarations in articulo mortis are not admissible on an indictment for administering medicine to procure abortion. Rex v. Hutchinson. 2 B. & C. 608, n.

Nor on an indictment for perjury. Rex v. Mead, 4 D. & R. 120; 2 B. & C. 605.

Upon an indictment for feloniously using certain instruments upon the person of a woman, who afterwards died, with intent to procure a miscarriage, the dying declaration of the woman is inadmissible. Reg. v. Hind, Bell, C. C. 253; 8 Cox, C. C. 300; 2 L. T., N. S. 253; 6 Jur., N. S. 514; 29 L. J., M. C. 147; 8 W. R. 421.

The declaration of a convict at the moment of execution could not be given in evidence as the declaration of a dying man, for, being attainted, his testimony could not have been received on oath. Rex v. Drummond, 1 Leach, C. C. 337; 1 East, P. C. 353, n. But see 6 & 7 Vict. c. 85.

A declaration in articulo mortis,

made by a child only four years old, is not admissible on the trial of an indictment for the murder of such child; because a child of such tender years cannot have that idea of a future state which is necessary to make such a declaration admis-Rex v. Pike, 3 C. & P. 598 –Park. See Reg. v. Perkins, 9 C. & P. 395—Coltman and Rolfe.

If a person whose death is the subject of a charge of manslaughter expresses an opinion that she will not recover, and makes a declaration, and at a subsequent part of the same day asks a person whether he thinks she will "rise again":-Held, that this shewed such a hope of recovery as rendered the previous declaration inadmissible. Fagent, 7 C. & P. 238—Gaselee.

The deceased said, "I think myself in great danger:"-Held, that these words did not, necessarily, exclude all hope, and therefore that they were not admissible as a dying declaration. Errington's case; 2 Lewin, C. C. 148—Patteson.

In a case of murder, it appeared that two days before the death of the deceased the surgeon told her that she was in a very precarious state, and that on the day before her death, when she had become much worse, she said to the surgeon that she found herself growing worse, and that she had been in hopes she would have got better, but as she was getting worse, she thought it her duty to mention what had taken place. Immediately after this she made a statement: —Held, that this statement was not receivable in evidence as a declaration in articulo mortis, as it did not sufficiently appear that at the time of the making of it the deceased was without hope of recovery. Reg. v. Megson, 9 C. & P. 418-Rolfe.

Where the deceased, having said that he thought he should die, made a statement, and two or three days afterwards expressed his belief that | ing declarations may be given in

he should recover and he lived some days after that:—Held, that the statement was inadmissible. Reg. v. Taylor, 3 Cox, C. C. 84—Patteson.

On a trial for murder, it was proved that the deceased, who lived a few hours after the wound was inflicted, made a statement, at the conclusion of which he exclaimed, "Oh, God! I am going fast; I am too far gone to say any more"; but he did not appear to have previously said anything about his condition, and there was no evidence. one way or the other, to shew that he was aware of it:—Held, that the statement was inadmissible as a dying declaration. Reg. v. Nicolas, 6 Cox, C. C. 120—Creswell.

In order to render dying declarations admissible in evidence, the facts to show that the deceased was eouseions of his state must point to the time of the statement, and therefore declarations some days prior to an expression that the deceased "had given up all in this world," are inadmissible. Reg. v. Qualter, 6 Cox, C. C. 357—Wightman.

Where the deceased said he was "a murdered man, and it would have been better if they had killed him on the spot than left him to linger, and that he thought he should never get over it," but he lived several weeks afterwards:-Held, that there was a primâ facie case for the admissibility of declarations made at the time of those statements. But where the person to whom the declarations were made stated that he believed the words "murdered man" were not used in their literal sense, and that the deeeased did not appear to have any immediate fear of death on his mind:—Held, that the case was taken out of the principle on which such declarations are receivable. 1b.

In Favor of the Accused. - Dy-

evidence in favor of the accused. Rex v. Scaife, 1 M. & Rob. 551; 2 Lewin, C. C. 150—Coleridge.

Form of Taking. ]—A deposition made before a magistrate by a dying man, as to the cause of his death, need not, on the face of it, shew that it was made under circumstances which would render it admissible in evidence as a dying declaration; but that is a fact dehors the statement, and may be proved by parol testimony. Reg. v. Hunt, 2 Cox, C. C. 239.

If a declaration in articulo mortis is taken down in writing, and signed by the party making it, the judge will neither receive a copy of the paper in evidence, nor will he receive parol evidence of the declar-Rex v. Gay, 7 C. & P. 230 —Coleridge.

Parol evidence of dying declarations which have been reduced into writing cannot be received. Rex v. Trowter, 1 East, P. C. 356.

#### 12. Evidence and Witnesses.

On an indictment for the murder of a constable in the execution of his office, it is not necessary to produce his appointment: it is sufficient if it is proved that he was known to act as a constable. Rex v. Gordon. 1 Leach, C. C. 515; 1 East, P. C. 312,

On a trial for murder, every person who was present at the time of the transaction which gives rise to the charge, ought to be called as a witness on the part of the prosecution; for, even if they give different accounts, the jury should hear the evidence, and draw their own conclusion as to the truth. Reg. v. Holden, 8 C. & P. 606—Patteson.

On the trial of an indictment for murder, the death of the person charged to have been killed may be collected from the circumstances, if incapable of being proved by other evidence. Rex v. Hindmarsh, 2 Leach, C. C. 569.

As where the deceased was thrown overboard into the sea, and never heard of afterwards.

Although it is necessary, in a case of murder, that there should be evidence that the body found is the body of the murdered person, the circumstances may be sufficient evidence of identity. Reg. v. Cheverton, 2 F. & F. 833—Erle.

Where a charge of murder depends upon circumstantial evidence, it ought not only to be consistent with the prisoner's guilt, but inconsistent with any other rational conclusion. Hodge's case, 2 Lewin, C.

C. 227—Alderson.

On a charge of murder, the deceased having been found tied hand and foot, and with something forced into the throat, apparently to prevent any outcry, but which had caused suffocation, and the state of the premises shewing that a burglary had been committed; and the evidence against the prisoner being a chain of circumstances tending to identify him as one of two persons employed in the burglary, the jury was directed, that, if satisfied that the prisoner was engaged in the burglary, and a party to the violence on the person of the deceased, they should find him guilty of the murder. Reg. v. Franz, 2 F. & F. 580—Blackburn.

A. was indicted for the murder of H. It was opened, that A., having malice against P., had hired H. to murder him, and that H. did so; but that H. being detected, A. had murdered H. to prevent a discovery of his (A.'s) guilt respecting the murder of P. Evidence was given of expressions of malice used by A. towards P.:-Held, that the prosecutor might also give evidence to shew that H. was in fact the person by whom P. had been murdered. Rex v. Clewes, 4 C. & P. 221— Littledale.

Although, where it is clearly proved that the prisoner wilfully gave the fatal blow, it is not necessary to shew motive or personal malice, or a particular intent to kill the deceased; and if he killed A., meaning to kill B., it is clearly murder; yet, where it is a main part of the proof that he killed the deceased, that he meant to kill some one else, it is essential to prove that he had an intent to kill such other person, and that such person was or might be supposed to be at or near the spot, at or about the time of the fatal blow. Reg. v. Cleary, 2 F. & F. 850—Erle.

On an indictment for manslaughter, where the death is occasioned by the application of a lotion to the skin, evidence may be given of the effect of the lotion when applied to other patients. Rex v. St. John Long, 4 C. & P. 398—Park and

Garrow.

An allegation in an indictment, charging that the death of a person was caused by a plaister made and applied by the prisoner, is sufficiently proved by shewing that three plaisters were applied, and that two of them were applied by the prisoner, and the third made from materials furnished by the prisoner. Rexv. Spiller, 5 C. & P. 333—Bolland and Bosanguet.

An indictment charged that the death of the deceased was caused by a mortal wound of the head, inflicted with a swingle. It was proved that the death was caused by a blow on the head by a piece of wood, and that the external skin was not broken, but that there was extravasation of blood, pressing on the brain, and a collection of blood between the scalp and the brain. The surgeon stated this to be a contused wound, with effusion of blood: —Held, that the evidence supported the indictment. Reg. v. Warman, 2 C. & K. 195; 1 Den. C. C. 183.

An indictment charged, that the deceased was on horseback, and that the prisoner struck him with a stick, and that the deceased, from a wellgrounded apprehension of a further | by the deceased to the witness im-

attack, which would have endangered his life, spurred his horse, which became frightened, and threw him, giving him a mortal fracture. The evidence was, that the prisoner struck the deceased with a small stick, and that the latter rode away. and the former rode after him; whereupon the deceased spurred his horse, which then winced and threw him, whereby he was killed:—Held, that this evidence sufficiently supported the indictment. Rex v. Hickman, 5 C. & P. 151—Park.

In a case of manslaughter, it was proved that the deceased was at an inn for three days, and that the innkeeper asked him what his name was, and that while there letters arrived at the inn directed in that name, which letters were delivered to the deceased, and received by him:—Held, that the innkeeper might be asked what name the deceased gave. Rex v. Timmins, 7 C. & P. 499—Patteson.

A. was charged with manslaughter, in killing B., by driving a cabriolet over him. C. saw the cabriolet drive by, but did not see the Immediately afterwards, accident. on hearing B. groan, C. went up to him, when B. made a statement as to how the accident had happened: —Held, that this statement, being made at the moment of the accident occurring, was receivable on the trial of A. for the manslaughter of B. Rex v. Foster, 6 C. & P. 325— Park, Patteson, and Gurney.

Statements made by the deceased to the first person who comes up after he has been wounded, are admissible as part of the res gestæ. The deceased died from the effects of a wound on his head, inflicted by A girl in the neighbourhood heard a cry, and coming out found the deceased standing with his cap in his hand, and apparently weak and injured. The deceased did not survive more than a few hours:—Held, the statement made mediately on her coming up, complaining of the injury, was admissible in evidence, being part of the res gestæ. Reg. v. Lunny, 6 Cox, C. C. 477—Ir. C. C. R.

The evidence against a prisoner charged with manslaughter was an admission on his part, that, unfortunately, he was the man who shot the deceased; and the fact that, on their coming together, apparently not in ill-humour, from the South Metropolitan Cemetery, where the prisoner was a watchman, but with which the deceased had no connexion, the prisoner said to the deceased, "Now, you mind, don't let me see you on my premises any more." At the time this was said, the wound had been given of which the deceased eventually died:—Held, that, in point of law, the evidence was sufficient to sustain the charge. Rex v. Morrison, 8 C. & P. 22—Park.

# 13. Trial, Judgment and Execution in Murder.

4 & 5 Will. 4, c. 26, s. 1.]—By 2 & 3 Will. 4, c. 75, s. 16, 25 Geo. 3, c. 37, was repealed, so far as re-

lated to this subject.

By 24 & 25 Vict. c. 100, s. 2, " upon every conviction for murder " the court shall pronounce sentence "of death, and the same may "be carried into execution, and "all other proceedings upon such "sentence and in respect thereof "may be had and taken, in the "same manner in all respects as " sentence of death might have been " pronounced and carried into exe-" cution, and all other proceedings "thereupon and in respect thereof " might have been had and taken, "before the passing of this act, "upon a conviction for any other "felony for which the prisoner "might have been sentenced to " suffer death as a felon."

By s. 3, "the body of every per-"son executed for murder shall be "buried within the precincts of the "prison in which he shall have been " last confined after conviction, and the sentence of the court shall so direct."

25 & 26 Vict. c. 65, "provides "for the speedier trial of offenders, "subject to martial law, commiting "murder or manslaughter on parties "also subject to martial law."

By 31 & 32 Vict. c. 24, "capital punishment for murder is to be carried out within the prison

" walls."

Where two persons charged with murder by the same indictment had made statements implicating one another, and those statements were evidence for the prosecution, the court, upon the application of the counsel appearing for one prisoner, allowed them to have separate trials. Reg. v. Jackson, 7 Cox, C. C. 357—Martin.

A man upon whom sentence of death has passed ought not, while under that sentence, to be brought up to receive judgment for another felony, although he was under that sentence when he was tried for the other felony, and did not plead his prior attainder. Rew v. Brady, R. & R. C. C. 268.

The time and place of the execution of a convicted felon form no part of the sentence. Rev v. Doyle, I Leach, C. C. 67.

A judge might, if he saw fit, have ordered a person convicted of murder to be executed immediately, or at any time within 48 hours after the conviction, as he might have done in any other capital felony. Rew v. Wyatt, R. & R. C. C. 230.

It was not essential to award the day of execution in the sentence, the 25 Geo. 2, c. 37, being in that respect only directory; and if a wrong day was awarded, it would not vitiate the sentence, if the mistake was discovered and set right during the assizes. *Ib*.

The bodies of executed murlerers were by the common law at the king's disposal, and therefore the court could not direct them to be

hung in chains. Rex v. Hall, Leach, C. C. 21.

Where a woman who had been condemned to death did not, when called upon to say why execution should not be done upon her, plead her pregnancy, the court would not permit that question to be formally inquired into, at the suggestion of her counsel that she was in fact pregnant. Reg. v. Hunt, 2 Cox, C. C. 261.

Sentence of death might under 6 & 7 Will. 4, c. 30, be recorded against a person convicted of murder. *Reg.* v. *Hogg*, 2 M. & Rob. 381—Denman.

Quære, whether on passing sentence of death on a conviction for murder, the award of dissection and anatomizing, in pursuance of 25 Geo. 3, c. 37, was an essential part of the sentence to be pronounced by the judge? Rea v. Fletcher, R. & R. C. C. 58.

The omission of it might be remedied by the judge going again into court after adjournment, from his lodgings, and ordering the prisoner to be again brought up, and then passing the proper judgment, as the sentence might be corrected or altered at any time during the assizes. *Ib*.

On a conviction for murder, in which the prisoners were brought up by habeas corpus, and the record by certiorari, the court gave the prisoners three days' time to examine the record and instruct counsel to shew cause why execution should not be awarded against them. Reav. Garside, 4 N. & M. 33; 2 A. & E. 266.

Semble, that a pardon after judgment may be pleaded ore tenus, and in bar of execution; and there may be a demurrer to such a plea ore tenus. *Ib*.

The court of King's Bench has authority to order the sheriff of any if ine as the court shall award, in county, or the marshal of the court, addition to or without any such to carry into execution a sentence of death, pronounced by a judge under out of the discretionary punishment as death, pronounced by a judge under aforesaid."

Rex v. Hall, 1 a commission of over and terminer and general gaol delivery. Ib.

A proclamation promising a pardon cannot be pleaded as a pardon. Ib.

But where such proclamation had been made, the court, in their discretion, deferred the awarding of execution upon the sentence, until the prisoner should have had time to apply to the secretary of state for a pardon, according to the terms of the proclamation. *Ib*.

The attorney-general is entitled, as of course, to a habeas corpus and certiorari, to bring up a prisoner and the record of his conviction in case of felony. *Ib*.

A sheriff is not bound, upon service of a copy of the calendar of prisoners signed by a justice of gaol delivery at the assizes, to execute prisoners against whom sentence of death has been passed, unless such prisoners are in his legal custody. Rex v. Antrobus, 4 N. & M. 565; 2 A. & E. 798; 1 H. & W. 96; 6 C. & P. 784.

Where the sheriff has the custody of a prisoner, the judgment of the court passing sentence of death upon him is, without any warrant or copy of the calendar, sufficient to authorize and require the sheriff to do execution; the copy of the calendar signed by the judge is a mere memorial. *Ib*.

# 14. Punishment for Manslaughter.

By 24 & 25 Vict. c. 100, s. 5, "whosever shall be convicted of "manslaughter shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than three "years (now by 27 & 28 Vict. c. "47, not less than five years), or to "be imprisoned for any term not "exceeding two years, with or with out hard labour, or to pay such "fine as the court shall award, in "addition to or without any such "other discretionary punishment as "aforesaid."

# XXIV. NIGHT POACHING AND OFFENCES RELATING TO GAME, HARES AND RABBITS.

1. The Offence, 384.

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6. Hares or Rabbits, 393.

#### 1. The Offence.

Statutes.]—9 Geo. 4, c. 69, 7 & 8 Vict. c. 39, and 25 & 26 Vict. c. 114. The 9 Geo. 4, c. 69, repealed 57 Geo. 3, c. 90.

The 9 Geo. 4, c. 69, s. 9, creates two distinct offences. First, the entering in the night on land to the number of three, some one of them being armed; and second, the being in the night on land to the number of three, some one of them being armed. Rea v. Kendrick, 7 C. & P. 184—Coleridge.

In a case of night poaching by three or more armed, if one has a gun, all are armed within 9 Geo. 4, c. 69, s. 9. Reg. v. Goodfellow, 1 C. & K. 724; 1 Den. C. C. 81; S. P., Reg. v. Andrews, 1 Cox, C. C. 144; Reg. v. May, 5 Cox, C. C. 176—Patteson.

Entry.]—If nets are hung on the twigs of a hedge within the close, it is an entry, though the parties are in a lane outside the hedge. Athea's case, 2 Lewin, C. C. 191—Alderson. See Pickering v. Rudd, 1 Stark. 56; 4 Camp. 219.

If three persons go out together night poaching, one being armed, and two of them stand in a road, and set nets in the hedge of a field of A., and send their dog into the field to drive hares into the net, and after this the third leaves them in the road and goes to poach by himself in another field of A.; this will not support an indictment for night-poaching on land of A.; for the sending in of a dog is not an entering of land within 9 Geo. 4, c. 69, s. 9; and the entering of the second

field was not a joint act of the three. Reg. v. Nickless, 8 C. & P. 757— Patteson.

Six were indicted under 9 Geo. 4, c. 69, s. 9, for having been in a field at night, armed for the purpose of taking game. Three of the six had been in the field, and three had remained outside of it, aiding and assisting the others:—Held, that the actual entry of some of the party, armed, was sufficient to support the conviction of all, though it could not be proved which of them had actually entered the field. Reg. v. Whittaker, 1 Den. C. C. 310; 3 Cox, C. C. 50.

In order to bring a case of night-poaching within 9 Geo. 4, c. 69, s. 9, it is not necessary to prove that three persons were all within the same close or inclosure, on the same piece of open land, if all were of one party, or being armed, with the same common purpose, in the place described in the indictment. Reg. v. Uezzell, 2 Den. C. C. 274; T. & M. 598.

A count stated that the prisoners were in a field called A., for the purpose of then and there taking game:—Held, that they could not be convicted on that count, nnless the jury was satisfied that the prisoners had an intention of taking game in that particular field. Reav. Capewell, 5 C. & P. 549—Parke.

A defendant was convicted under 1 & 2 Will. 4, c. 32, s. 30, of trespassing on land in the possession and occupation of B. in pursuit of game:—Held, that the entry upon the land under that section must be a personal entry, but it having been proved that the defendant was on the highway in pursuit of game, and not as a traveller, and that B. was the owner of the land on both sides of the highway:—Held also, that, as the soil and freehold of the highway were in B. as owner of the adjoining land, there was a personal entry on the land by the defendant. Reg. v. Pratt, Dears. C. C. 502; 3

C. L. R. 686; 1 Jur., N. S. 681; 24 L. J., M. C. 113; 4 El. & Bl. 860.

On an indictment on 57 Geo. 3, c. 90, he having entered a given close with intent there to kill game, and being there found armed, it was necessary to prove an entry with that intent into the close speci-Rex v. Barham, 1 M. C. C. R. 151.

On an indictment under 57 Geo. 3, c. 90, a man might have been convicted of having entered a wood, and of being found armed there, though he was not seen in such wood. It was sufficient if there was evidence to shew that he had been there armed. Rex v. Worker, 1 M. C. C. R. 165. In this case the prisoner was not seen in the wood, but a gamekeeper saw flashes in the wood and heard reports of guns, and saw the prisoner afterwards in the close adjoining the wood.

Two were charged with being by night, and armed, in a close for the purpose therein of destroying game. It was proved that they passed through the close without doing anything in it, and that after being lost sight of for two hours, they were found three miles off with game in their possession:—Held, that there was evidence that they were in the particular close for the purpose of taking game, and that if persons went out with a general intention of taking game, that was sufficient evidence of an intent to take game in every field through which they passed, in which game might be expected to be found. Reg. v. Higgs, 10 Cox, C. C. 527—Willes.

*Information.*]—In an indictment, perjury was alleged to have been committed on the hearing of a complaint for entering land for the purpose of taking game, contrary to 9 Geo. 4, c. 69: Held, that it need outside of a preserve, for the purnot appear on the face of the in- pose of giving the alarm, on the

formation or complaint in writing that the offence was "entering land for the purpose of taking game there," in order to prove the justice's jurisdiction before whom perjury is alleged to have been committed. Reg. v. Western, 11 Cox, C. C. 93; 1 L. R., C. C. 122; 18 L. T., N. S. 299; 16 W. R. 730.

An information under 9 Geo. 4, c. 69, s. 1, for entering land for the purpose of taking game, is sufficient to give the justices before whom it is laid jurisdiction to hear the charge, although it does not allege that the entry was for the purpose of taking game there. Reg. v. Western, 1 L.R., C. C. 122; 18 L. T., N. S. 299; 16 W. R. 730; 37 L. J., M. C. 81.

In Concert and Co-operation. -To support an indictment for night poaching by three or more being armed, it is not sufficient to prove that one of the prisoners was in the place laid in the indictment, and that the rest of the party was in another wood which was separated from the place mentioned in the indictment by a turnpike road. Rex v. Dowsell, 6 C. & P. 398—Patteson.

To sustain an indictment for night poaching, the parties must have been in the place charged in the indictment, with intent to destroy game there, and it is incumbent on the prosecutor to convince the jury that the defendants had an intent to destroy game in the particular place mentioned in the indictment. Rex v. Gainer, 7 C. & P. 231—Coleridge.

If one of a party of poachers is found in the land specified, the rest co-operating in the pursuit in adjoining land, all may be alleged to be found in the land specified. Rex v. Andrews, 2 M. & Rob. 37—Gurney; S. P., Rex v. Lockett, 7 C. & P. 300—Alderson.

Those who are watching at the

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approach of the gamekeeper, to others who are in the preserve, and who afterwards go into the preserve for that purpose, are equally guilty with those who enter the preserve at first. Rex v. Passey, 7 C. & P. 282—Alderson.

Two of the prisoners were seen together running out of a coppice, one of them with a guu. The third immediately afterwards came out of it alone with a gun and a pheasant:—Held, insufficient evidence of concert. Reg. v. Jones, 2 Cox, C. C. 185—Maule.

It is not essential that all the prisoners charged should actually enter the inclosed places; but, if they are associated together for the common purpose of taking game contrary to the statute, and some of the party actually enter such place to effect that purpose, while the others remain near enough to aid and assist, they may all be convicted under an indictment charging them with being in such place for such purpose. Reg. v. Whittaker, 2 C. & K. 636; 17 L. J., M. C. 127; 1 Den. C. C. 310; 3 Cox, C. C. 50.

It is not necessary to constitute the offence of three or more persons armed entering land in the night to take game, that all the three persons should be in one close, or that the land should be in the occupation of one person. Reg. v. Uezzell, 3 C. & K. 150; 2 Den. C. C. 274; 5 Cox, C. C. 188; 15 Jur. 434; 20 L. J., M. C. 192.

One of the prisoners may be in Whiteacre, another in Blackacre, and another in Greenacre, and the land may be in the occupation of different persons. The offence is complete if three persons are in one common party unlawfully upon any land, whether open or inclosed land, for the common purpose of illegally destroying game; and it is sufficient to describe the close of land as inclosed or open land, in the occupa-

tion of a certain person or of certain persons. Ib.

Decisions under Repealed Enactment.]—It was no answer to a charge on 57 Geo. 3, c. 90, for being found armed in the night in a wood, with intent to kill game, that the prisoners put down their arms and left them before they were seen, if it was perceived that some one was there armed before they were seen. Rex v. Nash, R. & R. C. C. 386.

On an indictment on 57 Geo. 3, c. 90, for being out armed, with intent to kill game, it appeared that several persons were out with such intent, but only one of them was armed with a gun:—Held, that the rest, who were unarmed, were liable to be convicted under that act. Rex v. Smith, R. & R. C. C. 368.

For if any one of the party was armed, it was sufficient to bring the whole party within the statute. *Ib.* 

On an indictment on 57 Geo. 3, c. 90, against a person for being found armed in the night, with intent to kill game:—Held, that if several went into a close in the night to kill game, and one had arms without the knowledge of the others, the other persons who were unarmed were not liable to be convicted. Rex v. Southern, R. & R. C. C. 444.

Weapons.]—Large stones are offensive weapons, within 9 Geo. 4, c. 69, s. 9, if the jury is satisfied that the stones are of a description capable of inflicting serious injury if used offensively, and were brought and used for that purpose. Rew v. Grice, 7 C. & P. 803—Ludlow, Serjt., Parke and Bolland.

The mere use of a small stick, as a weapon, by a poacher, in a sudden affray with gamekeepers, is not enough to prove such stick an offensive weapon, under 9 Geo. 4, c. 69, s. 9. The jury must be con-

vinced that the party took it with him for the purpose of offence. Rex v. Fry, 2 M. & Rob. 42—Gurney.

A party out at night, in pursuit of game, carried a thick stick large enough to be called a bludgeon, but which he used at other times as a crutch, he being lame:—Held, that it was a question for the jury whether the prisoner had taken out this stick to use as an offensive weapon, or merely for the purpose to which he usually applied it; and that, although it was a weapon within the statute, and might be used offensively, yet that, unless the defendant took it out with an intention of so using it, the indictment could not be sustained. Rex v. Palmer, 1 M. & Rob. 70—Taunton.

An indictment alleged that the defendant and others were armed with bludgeons and other offensive weapons, and the evidence was that they had sticks:—Held, that a stick was not necessarily an offensive weapon, in the absence of evidence of its size, &c., even although it had been used offensively. Reg. v. Merry, 2 Cox, C. C. 240—Maule.

What Game.]—A person cannot be convicted under 9 Geo. 4, c. 69, s. 9, for entering land by night, armed for the purpose of taking game, whose object is to steal young pheasants which had been hatched by a hen, and which had not yet become wild. Reg. v. Garnham, 2 F. & F. 347; 8 Cox, C. C. 451—Pollock.

Apprehension of Offenders.]—When gamekeepers find poachers in a wood, they need not give any intimation by words that they intend to apprehend—the circumstances are sufficient notice; and if a person out poaching sees a man running after him, he may fairly presume that the person means to

apprehend him. Rex v. Davis, 7 C. & P. 785—Parke.

The 14 & 15 Vict. c. 19, s. 11, which gives any person a right to apprehend persons committing indictable offences in the night, applies to persons night poaching within 9 Geo. 4, c. 69, s. 9, although the night is defined to begin and end at different times in the two statutes. Reg. v. Sanderson, 1 F. & F. 598—Willes.

Prisoners indicted for night poaching, and for assaulting a gamekeeper with intent, evidence of the common intent to poach does not sustain the allegation of a common intent to wound. Reg. v. Doddridge, 8 Cox, C. C. 335—Martin and Channell.

The prisoners were seen upon the land of the prosecutor at night in pursuit of game. They escaped into a highway and there assaulted the keepers. But the keepers stated that they had not followed them into the highway with an intention to arrest them there:—Held, that there heing no intention on the part of the keepers to arrest them at the time when the attack was made upon them, it was not an assault within 9 Geo. 4, c. 69. *Ib*.

Gamekeepers, who were out watching in the night, heard firing of guns in the preserves of their employer, and they waited in a turnpike road, expecting the poachers to come there, which they did, and an affray ensued between the gamekeepers and the poachers:—Held, that, if the gamekeepers were then endeavouring to apprehend the poachers, they were not justified in so doing. Reg. v. Meadham, 2 C. & K. 633—Wightman.

A policeman has no power under 25 & 26 Vict. c. 114, to apprehend persons whom he may suspect of coming from land where they have been unlawfully in pursuit of game, and such persons may lawfully resist and use such violence as is nec-

essary to prevent their apprehen-Reg. v. Spencer, 3 F. & F. 854-Martin.

Where, under such circumstances, several persons resist with intent only to prevent their apprehension, and one of them is guilty of excess, the others are not responsible for the act of their companion exceeding the common intent. Ib.

A policeman can only justify stopping and searching a cart upon a highway under 25 & 26 Vict. c. 114, where he has good cause to suspect that the cart is carrying game which has been unlawfully obtained; and upon an indictment for assaulting the policeman in the execution of his duty under such circumstances, it is necessary to prove the existence of reasonable grounds of suspicion; where no reasonable grounds of suspicion can be shewn, persons are justified in resisting the search. Reg. v. Spencer, 3 F. & F. 857—Martin.

A gamekeeper, or other person lawfully authorized under 9 Geo. 4, c. 69, s. 2, may apprehend persons found offending under that act, without calling on them to surrender, if the circumstances are such as to constitute notice of his purpose. Rex v. Payne, 1 M. C. C. 378.

A person who is employed by a lord of a manor, as a watcher of his game preserves, is a person having authority to apprehend night poachers, and he need not have any authority from the lord of the manor. Rex v. Price, 7 C. & P. 178 -Park.

Where a person is found night poaching on the manor of A. by one of his watchers, and was pursued off the manor, and then on to it again, and there snapped his gun at the watcher, he was guilty of a capital offence under 9 Geo. 4, c. Ib.31, ss. 11, 12.

The servant of the owner of a

wood attempted to apprehend a poacher whom he found there at eight o'clock on the morning of the 17th December, and the poacher shot at him:—Held, that this was not a capital offence within 9 Geo. 4, c. 31, ss. 11, 12, as there was no proof that the poacher was in pursuit of the game an hour before sunrise. Rex v. Tomlinson, 7 C. & P. 183—Coleridge.

The gamekeeper of a person who has merely the right of shooting over land is not justified in apprehending a person unlawfully being upon such land by night, for the purpose of taking game. Reg. v. Price, 5 Cox, C. C. 277—Patteson

and Talfourd.

A gamekeeper appointed by a person having only a permission to shoot, trying to take a gun from a poacher, and in the scuffle causing a loaded gun to go off, which killed the poacher, is guilty of manslaugh-Reg. v. Wesley, 1 F. & F. 528—Campbell.

A person having only a right of shooting over land has no right to empower keepers to apprehend parties trespassing in search of game; and on their resisting with no greater violence than is used by the keepers, they will not be liable for an assault; but if the trespass is in the night, they may be indicted for night peaching. Reg. v. Wood, 1

F. & F. 470—Martin.

To justify the apprehension of an offender, under 1 & 2 Will. 4, c. 32, s. 31, it is only necessary that he should have been made to understand, by the person authorized under that section, that he is required to tell his christian name, surname and place of abode, and that he should have refused to comply with such requisition. It is not necessary that he should have been required both to quit the land and also to tell his name. Reg. v. Prestney, 3 Cox, C. C. 505—Parke.

#### 2. Limitation of Time for Prosecution.

B. and G. were convicted of night The indictment was uppoaching. on 9 Geo. 4, c. 69; by s. 4 of which it is enacted, that the prosecution for every offence "punishable by indictment by virtue of that act shall be commenced within twelve calendar months after the commis-The offence sion of the offence." was committed on the 4th of December, 1845. The information before the justices, and warrant, were on the 19th of December, 1845. B. was apprehended and committed on the 5th of September, 1846, and G. on the 21st of October, The indictment was preferred on the 5th of April, 1847:— Held, that the prosecution was commenced in time, and the conviction right. Reg. v. Brooks, 1 Den. C. C. 217; 2 C. & K. 402; 2 Cox, C. C. 436.

Where it appeared that the offence was committed on the 12th of January, 1844, and the indictment was preferred on the 1st of March, 1845, and the warrant of commitment by which the defendant was committed to take his trial was given in evidence, and it was dated on the 11th December, 1844:—Held, that it was sufficiently shewn that the prosecution was commenced within twelve calendar months after the commission of the offence, within s. Reg. v. Austin, 1 C. & K. 621 -Pollock.

In case of night poaching by persons armed, the offence was committed on the 4th December, 1845. On the 19th December, 1845, information of the offence was made before a magistrate, who on that day granted warrants to apprehend A. and B., two of the offenders. On one of these warrants A. was apprehended, and committed for trial on the 16th September, 1846; B. being apprehended on the other warrant, and committed for trial on the 21st October, 1846. The in- withdraw the plea was one which

dictment was preferred and found on the 5th April, 1847:—Held, that the prosecution was commenced within twelve calendar months after the commission of the offence, and that it was commenced by the information and warrants to apprehend, or at all events by the apprehension of the prisoners. Reg. v.

Gibson, 2 C. & K. 402.

Quære, whether the preferring of an indictment against a party for night poaching, which is ignored, is a commencement of the prosecution within 9 Geo. 4, c. 69, s. 4, so as to warrant the conviction of the party on another indictment preferred four years after the offence? Rex v. Killminster, 7 C. & P. 228 -Coleridge.

The issuing of a warrant of apprehension is not a commencement of proceedings, within 9 Geo. 4, c. 69, s. 4. Reg. v. Hull, 2 F. & F.

16—Pollock.

Upon the trial of an indictment, in order to prove that the proceedings were commenced within twelve months after the commission of the offence a warrant for the party's apprehension issued within the twelve months was produced; but the information on which the warrant was founded was not put in evidence:—Held, that, in the absence of the information, the warrant was not legal evidence that the proceedings had been commenced within Reg. v. Parker, the time limited. 9 Cox, C. C. 475; L. & C. 459; 10 Jur., N. S. 596; 33 L. J., M. C. 135; 12 W. R. 765; 10 L. T., N. S. 463.

C. was indicted for night poaching on the 6th February, 1863. He pleaded guilty, but subsequently applied by his counsel for leave to withdraw the plea, and to move in arrest of judgment, upon the ground that the proceedings against him had not been commenced within twelve calendar months, as directed by 9 Geo. 4, c. 69, s. 4: -Held, that the application to

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ought to he granted, and that, as no warrant or information was produced shewing that proceedings had been commenced within twelve months, that the objection was fatal. Reg. v. Casbolt, 21 L. T., N. S. 263 —Byles.

#### 3. Indictment.

An indictment on 57 Geo. 3, c. 90, charging a party with having entered into a forest, chase, &c., with intent to destroy game, and being found armed in the night, must, in some way or other, have particularized the place. Rex v. Rid-

ley, R. & R. C. C. 515.

In an indictment for night peaching, it is advisable to insert a distinct averment that the defendants were armed when they entered and were on the land, in addition to the usual allegation, "being then and there by night as aforesaid, armed." Rex v. Wilkes, 7 C. & P. 811— Parke.

In an indictment under 9 Geo. 4, c. 69, s. 9, it is sufficient to charge entering, &c., certain land in the occupation of A., without specifying whether it was inclosed or not. Rex v. Andrews, 2 M. & Rob. 37— Gurney; S. P., Reg. v. Morris, 5

Cox, C. C. 205.

Where an indictment alleged that A., B., C., D., to the number of three and more together, did by night unlawfully enter divers closes there situate, and being in the occupation of E., and were there and then in the said closes, armed with guns for the purpose of destroying game:—Held, that it did not contain a sufficient averment that the defendants were by night in the closes for the purpose of destroying Davies v. Rex (in error), 10 B. & C. 89; 5 M. & R. 78.

An indictment for night poaching stated the offence to have been committed in a wood, called "the Old Walk of, and belonging to, and then in the occupation of James, Earl of

occupation was correctly stated, but that the name of the wood was Long Walk, and that it had never been called Old Walk:-Held, a variance. Rex v. Owen, Car. C. L. 309; 1 M. C. C. 118.

An indictment for assaulting a gamekeeper with a weapon, stated that the defendants were in certain land of J. R., Earl of B., by night, armed with guns, for the purpose of destroying game, and that they were "then and there in the said land by night, as aforesaid, by one W. R., the servant of the said J. R., Earl of B., then and there having lawful authority to seize and apprehend the said [defendants] found," and that the defendants with the guns assaulted and offered violence to W. R.:—Held, that the indictment was bad, as it did not sufficiently shew that the defendants, when found by W. R., were committing any offence against the 9 Geo. 4, c. 64. Reg. v. Curnock, 9 C. & P. 730—Gurney.

A count for night poaching may be joined with a count for assaulting a gamekeeper authorized to apprehend, and with counts for assaulting a gamekeeper in the execution of his duty, and for a common as-Rex v. Finacane, 5 C. & P. sault.

551—Parke.

It is sufficient to allege that the land is land "of and belonging to J. W. D.," without stating it to be in the occupation of J. W.D. Reg.v. Riley, 3 C. & K. 116—Patteson.

Or to name any particular close, it is sufficient to say, "land in the occupation of B. or C." as the fact may be. Reg. v. Uezzell, T. & M. 598; 2 Den. C. C. 274; 5 Cox, C. C. 188; 3 C. & K. 150; 15 Jur. 434; 20 L. J., M. C. 192.

But "a certain cover in the parish of A." is too general a description to sustain an indictment for poaching. Rex v. Crick, 5 C. & P. 508

-Vaughan.

A count for assaulting a game-W."; and it was proved that the keeper alleged that the defendants, with other persons, to the number of three or more, entered by night a certain close with guns and other offensive weapons, for the purpose of taking and destroying game, and then proceeded to allege that the defendants being then and there in the said land, were found by one H. S., the servant of B. W. W., and there with the said guns assaulted and beat the said H. S.:—Held, that the count was defective for not alleging that the defendants were in the close armed with guns, &c., according to the language of sect. 9 of 9 Geo. 4, c. 69. Reg. v. May, 5 Cox, C. C. 176—Patteson.

An indictment charged A., B. and six others, "that they, being respectively armed with guns and other offensive weapons, entered." A. and B. were each proved to have been armed with a gun, the other Objection, six with bludgeons. that the averment, "other offensive weapons," (not specifying what) made the arming of the other six only constructive, which was not sufficient to bring them within the statute:—Held, good. Reg. v. Goodfellow, 1 Den. C. C. 81; 1 C. & K. 724.

An indictment under 9 Geo. 4. c. 69, s. 1, that on the 20th of December, 1854, C. was convicted for that he, within the space of six calendar months last past, by night, after the expiration of the first hour after sunset; and before the beginning of the first hour before sunrise, did, by night, then and there unlawfully enter a close with a gun, for the purpose of then and there taking and destroying game, and that he was then sentenced to be imprisoned for the period of three calendar months; that afterwards, to wit, on the 27th of November, A. D. 1858, he was duly convicted, for that he, within six calendar months next before, &c., to wit, on the 24th of November, 1860, in the night of the same day, by night, unlawfully did enter and be in and upon certain were all seen, for the first time, in

inclosed land, with certain instruments, for the purpose of killing, taking and destroying game thereon, this being his second offence, and was then adjudged to be imprisoned for six calendar months, is good, as it sufficiently shews upon the face of it, that two previous convictions of offences within the terms of the act had taken place, Cureton v. Reg. (in error), 1 B. & S. 208; 8 Cox, C. C. 481; 30 L. J., M. C. 149; 9 W. R. 665.

### 4. Evidence.

On an indictment for wounding with intent to prevent lawful apprehension, it was proved that the prisoners were found poaching in the night, armed, in a preserve which had belonged to the Earl of L., and then was in the possession of the earl's trustees. The person trying to apprehend was a watcher employed by the head keeper, the latter having been appointed by the earl some twenty years before, and paid by his agent down to the time of the trial; but the head keeper had never had any direct communication with the trustees:—Held, sufficient proof of an authority to apprehend. Reg. v. Fielding, 2 C. & K. 621—Cresswell.

Where A. was indicted for night poaching on the land of the prosecutor, which land was in the occupation of a tenant:-Held, that it was not necessary, in order to support the indictment, to shew by evidence that A. was there without the permission of the tenant, or of the prosecutor, if the right to take game upon the land had been reserved to him. Reg. v. Wood, Dears. & B. C. C. 1; 2 Jur., N. S. 478; 25 L. J., M. C. 96.

An indictment under 9 Geo. 4, c. 69, charged, that the prisoners, "were in the Great Ground on the 11th February, armed, with intent, then and there to take game." The evidence shewed that the prisoners

the Great Ground, employed in taking down two nets; after this was done they picked up some dead hares, which were lying on the ground near the nets, and hanging them on long sticks over their shoulders, walked homewards with them. It also appeared that they had dogs with them in the Great Ground:—Held, that the questions for the jury were, first, whether they were in the Great Ground with the intent to take game at that time, and that such intent might be inferred from the presence of the nets and dogs, though they might have taken the hares elsewhere. Reg. v. Turner, 3 Cox, C. C. 304-Rolfe.

Held, also, that the allegation that they were armed could not be sustained, unless the jury should be of opinion that they took the sticks for the double purpose of carrying away the game, and of attack or defence in the event of their being interrupted by keepers while in the pursuit of game.

## Convictions and Commitments.

A conviction under 9 Geo. 4, c. 69, s. 1, must allege that the defendants, by night, were in certain land for the purpose of taking game Fletcher v. Calthorp, in such land. 1 New Sess. Cas. 529; 9 Jur. 205; 14 L. J., Q. B. 49.

A warrant of commitment, reciting an order of sessions confirming a conviction under 9 Geo. 4, c. 69, s. 1, ordering the prisoners, at the expiration of their time of imprisonment, to find sureties not to offend again, instead of not so to offend again, is ill. Reynolds Ex parte, 8 Jur. 192; 13 L. J., M. C. 65 -B. C.—Wightman.

The court will presume that the commitment contains a true recital of the conviction; therefore, where the certiorari is taken away, and the prosecutor seeks, under sect. 7, to avail himself of the conviction to

the prisoner is not bound, nor is it his duty, to bring the conviction before the court. 16.

On an indictment for night peaching, having been twice summarily convicted, the convictions produced contained no allegation that the defendant had entered at night:-Held, insufficient evidence of a previous conviction. Reg. v. Merry, 2 Cox, C. C. 240—Maule.

### 6. Hares or Rabbits.

By 24 & 25 Vict. c. 96, s. 17, "whosoever shall unlawfully and "wilfully, between the expiration " of the first hour after sunset, and "the beginning of the last hour be-"fore sunrise, take or kill any hare " or rabbit in any warren or ground "lawfully used for the breeding or "keeping of hares or rabbits, wheth-"er the same be inclosed or not, "shall be guilty of a misdemeanor.

"And whosoever shall unlawful-"ly and wilfully, between the be-"ginning of the last hour before "sunrise and the expiration of the "first hour after sunset, take or kill "any hare or rabbit in any such "warren or ground, or shall at any "time set or use therein any snare " or engine for the taking of hares "or rabbits, shall, on conviction "thereof before a justice of the peace, forfeit and pay such sum " of money, not exceeding 51., as to "the justice shall seem meet; pro-"vided that nothing in this section "contained shall affect any person "taking or killing in the daytime "any rabbits on any sea bank or "river bank in the county of Lin-"coln, so far as the tide shall ex-"tend, or within one furlong of such " bank." (With the exception of the substitution of defined hours for "night time" and "day time," similar to former provision, 7 & 8 Geo. 4, c. 29, s. 30.

7 & 8 Geo. 4, c. 27, repealed 3 Jac. 1, c. 13; 7 Jac. 1, c. 13; 5 Geo. 3, c. 14; and so much of 22 & cure a defect in the commitment, 23 Car. 2, c. 25, as related to this subject; and 24 & 25 Vict. c. 95, repeals 7 & 8 Geo. 4, c. 29, s. 30, and 7 Will. 4 & 1 Vict c. 90, s. 5.

Taking a rabbit in a wire was sufficient to constitute an offence within 5 Geo. 3, c. 14, s. 6, though the rabbit was not killed, and though the party never took it away. Rex v. Glover, R. & R. C. C. 269.

Destroying rabbits in the night time, in a rick-yard in which they were kept, was not within 7 & 8 Geo. 4, c. 29, s. 30. Rex v. Garratt, 6 C. & P. 369—Patteson.

### XXV. OBSCENITY AND INDECENCY.

- 1. Obscene Prints and Pictures, 393. Indecent Exposure, 393.
- 1. Obscene Prints and Pictures.

20 & 21 Vict. c. 83, "provides "additional powers for the suppres-"sion of the trade in obscene books, " prints and pictures."

It is a misdemeanor to procure indecent prints with intent to publish them. Dugdale v. Reg. (in error), 1 El. & Bl. 435; Dears. C. C. 64; 17 Jur. 546; 22 L. J., M. C.

But to preserve and keep them in possession with such intent, is not.

The sale of an obscene print to a person in private, he having in the first instance requested that such prints should be shewn to him, his object being to prosecute the seller, is a sufficient publication to sustain the charge. Reg. v. Carlile, 1 Cox, C. C. 229.

Obscene Books and Publications. Copies of a pamphlet of an obscene nature were seized under 20 & 21 The publisher did not Vict. c. 83. keep or sell the pamphlet for the sake of gain, nor to prejudice good morals, but for a purpose which he | Reg. v. Holmes, Dears. C. C. 207; 3

considered to be good:—Held, that the object of the publisher did not alter the character of his act, the natural consequence of which he must be taken to have intended, and the natural consequence being one which would make the publication of the pamphlet a misdemeanor, and in the opinion of the justices who ordered the seizure proper to be prosecuted as such, the seizure was right. Reg. v. Hicklin, 16 W. R. 801; 37 L. J., M. C. 89; 3 L. R., Q. B. 360; 11 Cox, C. C. 19; S. C. nom. Reg. v. Wolverhampton (Recorder), 18 L. T., N. S. 395.

## 2. Indecent Exposure.

## (2 & 3 Vict. c. 47, s. 58.)

Bathing in the sea on the beach near inhabited houses, from which the person may be distinctly seen, is an indictable offence, although the houses may have been recently erected, and till then it may have been usual for men to bathe in great numbers at the place in question. Rex v. Crunden, 2 Camp. 89—Macdonald.

An indecent exposure in a place of public resort, if actually seen only by one person, no other person being in a position to see it, is not a common nuisance. Reg. v. Webb, 1 Den. C. C. 338; 3 Cox, C. C. 183; T. & M. 23; 2 C. & K. 933; 13 Jur. 42; 18 L. J., M. C. 39. S. P., Reg. v. Watson, 2 Cox, C. C. 376.

An averment in an indictment, "in the sight and view of B.," does not mean that B. actually saw it, but only that he might have seen it had he chanced to look. Ib.

A party was indicted for an indecent exposure in an omnibus, several passengers being therein. The indictment contained two counts; one laid the offence as having been committed in an omnibus, and the other in a public highway:—Held, that an omnibus was sufficiently a public place to sustain this indictment.

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C. & K. 360; 17 Jur. 562; 22 L. J., M. C. 122; 6 Cox, C. C. 216.

An indictment for this offence, which does not conclude ad commune nocumentum, is aided by 14 & 15 Vict. c. 100, s. 25. Ib.

An indictment charged two defendants with indecent exposure of their persons in an open and public place:—Held, that an urinal with boxes or divisions for the convenience of the public, and situated in an open market, was not a public place within the meaning of the allegation. Reg. v. Orchard, 3 Cox, C. C. 248.

An indictment alleging that A. "in a certain open and public place did lay his hands on the person and private parts of B. with intent to stir up in his own and B.'s mind unnatural and sodomitical desires and inclinations, and to incite B. to the committing and perpetrating with A. divers unnatural and sodomitical acts, and that B. in the said open and public place, did permit and suffer A. to lay his hands, &c., with the like intent," is bad, as not stating any offence with legal certainty. Ib.

In order to render a person liable to an indictment for indecently exposing his person in a public place, it is not necessary that the exposure should be made in a place open to the public. If the act is done where a great number of persons may be offended by it, and several see it, it is sufficient. Reg. v. Thallman, 9 Cox, C. C. 388; L. & C. 326; 12 W. R. 88; 9 L. T., N. S. 425; 33 L. J., M. C. 58.

Where a man exposed himself indecently on a roof at the back of a house in London, so as to be visible to persons in the back premises of many other houses, but not so as to be capable of being seen from any place open to the public, and seven persons in one house saw the exposure, the conviction was held good. 16.

posure, charging the offence to have been committed on a highway, is not sustained by evidence that the offence was committed in a place near the highway, though in full Reg. v. Farrell, 9 Cox, view of it. C. C. 446.

An indecent exposure seen by one person only, and capable of being seen by one person only, is not an offence at common law. Secus, if there are other persons in such a situation as that they may be witnesses of the exposure. Ib.

The prisoners committed fornication in open day, on a common, in the sight of one witness only, but so that any one passing over the common, or along a public footway adjacent, could have seen them. There was no proof that any persons were passing over the common or along the footway at the time. Quære, whether this was an indictable offence? Reg. v. Elliott, L. & C. 103.

An indictment for an indecent exposure of the person before one J. S., with the intent to provoke him to commit an unnatural crime, which had been removed by the defendant by certiorari, is not within s. 23 of 7 Geo. 4, c. 64, so as to enable the court before whom it is tried to grant the costs of the pros-Reg. v. ——, 3 N. & P. ecution. 627; 8 A. & E. 589.

A person is indictable for a common nuisance by indecently exposing his person in a public place, though the exposure is made in a place not open to the public, if the act is done where a great number of persons may be offended by it, and several see it. Reg. v. Mallam, 33 L. J., M. C. 58.

A herbalist, who publicly exposes and exhibits in his shop, on a highway, a picture of a man naked to the waist and covered with eruptive sores, so as to constitute an exhibition offensive and disgusting, is guilty of a nuisance, although there is nothing immoral or indecent in the An indictment for indecent ex- picture, and his motive was innocent. Reg. v. Grey, 4 F. & F. 73 -Willes.

Bathing near a public footway, frequented by females, is unlawful, and renders the party so bathing liable to be indicted for indecency. Nor is it any defence that the place has been always used as a resort for bathers; or that the exposure has not been beyond what is necessarily incident to such bathing. Reed, 12 Cox, C. C. 1.

An indictment charged two defendants with indecent exposure of their persons in a public place, the same being a public urinal:—Held, that the urinal was a public place, and that the commission of the indecency therein was indictable. Reg. v. *Harris*, 11 Cox, C. C. 659.

### XXVI. PERJURY, FALSE OATRS AND FALSE DECLARATIONS.

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## False Oaths.

The offence.]—By 22 & 23 Vict. c. 17, s. 1, "a bill of indictment for "perjury or subornation of perjury "cannot be presented to or found | before a court-martial is perjury at

"by a grand jury unless preferred "without previous authorisation."

By 14 & 15 Vict. c. 99, s. 16, " every court, judge, justice, officer, "commissioner, arbitrator or other "person now (1851) or hereafter "having by law or by consent of " parties, authority to hear, receive "and examine evidence, is empow-"ered to administer an oath to all " such witnesses as are legally called " before them respectively."

5 Eliz. c. 9, made perpetual by 29 Eliz. c. 5, s. 2, and 21 Jac. 1, c. 28, s. 8; 2 Geo. 2, c. 25, made perpetual by 9 Geo. 2, c. 8; 7 Will. 4 & 1 Vict. c. 23.—" There is a great num-"ber of perjury clauses in various "acts of Parliament, each relating "to the oaths respecting the subject "matter of those acts respectively."

To found an indictment for perjury, the requisite circumstances are these: the oath must be taken in a judicial proceeding before a competent jurisdiction; and it must be material to the question depending and false. Rex v. Aylett, 1 T. R. 63.

With respect to the falsity of an oath, it has been considered to be immaterial whether the fact which is sworn to be in itself true or false. Rex v. Edwards, 3 Russ. C. & M. 1.

A man may be indicted for swearing that he believes a fact to be true which he must know to be false, although he does not swear positively. Rex v. Pedley, 1 Leach, C. C. 325.

Falsehood, not strictly amounting to perjury, is an indictable offence as a misdemeanor. Ex parte Overton, 2 Rose, 257.

Inciting a witness to give particular evidence when the inciter does not know whether it is true or false, is a high misdemeanor, especially if he being an attorney on one side, gets himself employed for that purpose on the other side: at least, if the evidence is given accordingly.

Semble, that taking a false oath

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Reg. v. Heane, 4 B. common law. & S. 947; 9 Cox, C. C. 433; 10 Jur., N. S. 724; 9 L. T., N. S. 719; 12 W. R. 417.

"But by the Annual Mutiny Act " (1866), 29 & 30 Vict. c. 9, s. 13, "all general and other courts-mar-"tial shall administer an oath to "every witness or other person who "shall be examined before any such " court, in any manner relating to "any proceeding before the same."

Wilful and corrupt false swearing before a local marine board, duly and lawfully appointed and constituted, upon a matter material to an inquiry then being lawfully investigated by them, in pursuance of the 17 & 18 Vict. c. 104, and 25 & 26 Vict. c. 63, is perjury. Reg. v.Tomlinson, 1 L. R., C. C. 49; 12 Jur., N. S. 945; 36 L. J., M. C. 41; 15 W. R. 46; 15 L. T., N. S. 188.

Perjury cannot be committed in evidence given before commissioners of bankrupt, when there was no good petitioning creditor's debt to support the fiat. Reg. v. Ewington, 2 M. C. C. 223; Car. & M. 319.

A. was indicted for perjury, alleged to have been committed on the trial of B. for perjury. The indictment against A. averred, that the evidence he gave on the trial of B. was material, and that B. was con-B. was convicted and senvicted. tenced, but the judgment against B. was afterwards reversed on writ of error:—Held, that the reversal of the judgment against B. was no ground of defence for A., as shewing that his evidence could not have been material, and that it did not negative the allegation that B. had been convicted. Reg. v. Meek, 9 C. & P. 513—Williams.

In an answer in chancery to a bill in equity against the defendant for specific performance of an agreement relating to the purchase of land, he relied on the Statute of Frauds (the agreement not being in writing), and also denied having enon this denial in his answer he was indicted for perjury:—Held, that the denial of an agreement, which, by the Statute of Frauds, was not binding on the parties, was immaterial and irrelevant, and that the defendant was entitled to an acquittal. Rex v. Dunston, R. & M. 109—Abbott.

Perjury cannot be assigned on an answer in chancery, denying a promise absolutely void by the Statute of Rex v. Benesech, Peake's

Add, Cas. 93—Kenyon.

Or form the subject of an indictment where the supposed perjury depends upon the construction of a deed. Rex v. Crespigny, 1 Esp. 280 And see Rex v. Pepys, -Kenyon. Peake, 138.

If the record of a cause is erroneous, no perjury can be assigned for false testimony given in the course of the trial. Rex v. Cohen, 1 Stark,

511—Ellenborough.

Perjury may be assigned as to what a man has sworn that he thought or believed; the difficulty, if any, being in the proof of the assignment. Reg. v. Schlesinger, 10 Q. B. 670; 2 Cox, C. C. 200; 12 Jur. 283; 17 L. J., M. C. 29.

A witness, having sworn at a trial of a cause, that he did not write certain words in the presence of D., it is a good assignment of perjury, that he did write them in the presence of D. Ib.

The presence of D. may be a fac' as material as the writing of the words. Ib.

A. brought an action against B. and his partners for the price of wheat, and recovered a verdict on the bought and sold notes. B. and his partners filed a bill in equity against A., which stated that the bought and sold notes did not contain all the terms of the contract, as it had been also agreed by parol between A. and B. that the wheat should be paid for by a draft at three months; and the prayer of the tered into any such agreement. Up- | bill was, that A. should be restrained from suing out execution. A., by his answer, denied the statement in the bill; and the bill was dismissed:—Held, that if this denial by A. was wilfully false, it amounted to perjury. Reg. v. Yates, Car. & M. 132; 5 Jur. 636—Coleridge.

Every question on cross-examination of a witness, which goes to his credit, is material. Reg. v. Overton, Car. & M. 655; 2 M. C. C. 263.

A question having uo general bearing on the matters in issue may be made material by its relation to the witness's credit, and false swearing thereon will be perjury.

On a trial where it was material to prove whether J. had died before M., the defendant produced a document purporting to be a copy of J.'s will, and falsely swore that he had examined it with the original will in the registry; and also, that he had examined a memorandum at the foot of the copy of the will, with the entry in a book called the Act Book in the same registry. The judge offered to admit the evidence, but it was withdrawn; it was, in point of law, inadmissible: -Held, that the circumstances that the evidence was inadmissible, and was withdrawn, did not affect the question of perjury, as it could not purge the false swearing; and that, as it was not material whether probate of J.'s will was granted in the lifetime of M., if the evidence of the prisoner had been received it would have been material to the issue, and, consequently, that the false oath of the prisoner amounted to perjury. Reg. v. Phillpotts, 2 Den. C. C. 302; 3 C. & K. 135; T. & M. 607; 16 Jur. 67; 21 L. J., M. C. 18: 5 Cox, C. C. 363.

In an action in a county court by an executrix for goods sold, she falsely swore on cross-examination that she had never been tried at the Old Bailey, and had never been in custody at the Thames Police Station:—Held, on the trial of an indictment for perjury, that this evi- | and corruptly sworn falsely in the

dence was material. Reg. v. Lavey, 3 C. & K. 26—Campbell.

Semble, that whether the evidence is material or not is a question to be left to the jury. Ib. See Reg. v. Courtney, 7 Cox, C. C. 111.

To convict a person of perjury in swearing falsely before a grand jury, it is not sufficient to shew that the person swore to the contrary before the examining magistrate, as non constat which of the contradictory statements was the true one. v. *Hughes*, 1 C. & K. 519—Tindal.

Perjury may be assigned upon evidence going to the credit of a material witness in a cause, although such evidence, being legally inadmissible, ought not to have been received. Reg. v. Gibbon, L. & C. 109; 9 Cox, C. C. 105; 8 Jur., N. S. 159; 31 L. J., M. C. 98; 10 W. R. 350; 5 L. T., N. S. 805.

G. was indicted for perjury, in having falsely sworn that in September, 1860, he had carnal knowledge A. had obtained an affiliation summons against H., and in her cross-examination denied having had connexion with the defendant in September, 1860 (a time which could not have made him the father of the child). The defendant was called as a witness on behalf of H., and swore that he had connexion with A. in the mouth named:—Held, that although his evidence was legally inadmissible, yet, being admitted, it became material, and perjury might be assigned upon it. Ib.

A defendant was sued in a county court by the name of Bernard Edward M. The judge decided that the plaintiff was entitled to recover, and whilst determining how the defendant should pay the debt, asked him his name; when he swore that it was Edward, not Bernard, only Edward; and thereupon the judge refused to amend, and struck out the cause. The defendant was indicted for perjury; and at the trial it was proved that he had wilfully above answers, and the jury convicted him:—Held, that the conviction was right; the answers being sufficiently material to the matter under inquiry. Reg. v. Mullany, 10 Cox, C. C. 97; L. & C. 593; 11 Jur., N. S. 492; 34 L. J., M. C. 111; 13 W. R. 726; 12 L. T., N. S. 549.

An unmarried woman having recovered judgment in a county court against A., obtained a judgment summons against him from the Sheriffs' Court, London. At the hearing, it having been ascertained that the plaintiff had married in the meantime, the judge amended the title of the cause by inserting the husband's name:—Held, that he had no power to do so, and consequently, that an indictment for perjury could not be maintained against the defendant for false evidence given at that hearing. Reg. v. Pearce, 3 B. & S. 531; 9 Cox, C. C. 258; 9 Jur., N. S. 647; 11 W. R. 235; 7 L. T., N. S. 597.

H. was indicted for perjury in an affidavit made under the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36), for the purpose of getting a bill The affidavit was of sale filed. sworn before a commissioner for taking affidavits in the court of Queen's Bench:—Held, that his offence did not constitute perjury, but that he was guilty of taking a false oath, which offence was under the circumstances a common law misdemeanor. Reg. v. Hodgkiss, 1 L. R., C. C. 212; 18 W. R. 150; 39 L. J., M. C. 14; 21 L. T., N. S. 564.

C. was indicted for perjury committed on the hearing of a summons which had been taken out against himself, for permitting gambling in his house contrary to the tenor of his licence, under 9 Geo. 4, c. 61. The defendant had tendered himself as a witness, representing himself as the son of C., and had thereupon been sworn and given evidence on behalf of C., who was really himself, and that evidence formed the

subject of the indictment:—Held, that as he was not a competent witness and could not give evidence in his own behalf, the magistrates had no power to swear him or receive his evidence, and that he could not therefore be guilty of perjury. Reg. v. Clegg, 19 L. T., N. S. 47—Hannen.

## 2. On Affidavits.

No perjury can be assigned upon a foreign affidavit. *Musgrave* v. *Medex.* 19 Ves. 652.

But any person making, or knowingly using a false affidavit made abroad, is guilty of a misdemeanor in attempting to pervert public justice, and is punishable by indictment. Omealy v. Newell, 8 East, 364.

Perjury may be assigned upon an affidavit of an attorney of the court, made in answer to a charge exhibited against him in a summary way. Rea v. Crossley, 7 T. R. 315.

An indictment for perjury, assigned on an affidavit sworn before the court, need not state, nor is it necessary to prove, that the affidavit was filed of record, or exhibited to the court, or in any manner used

by the party. 1b.

An indictment may be supported against a marksman, for swearing falsely in an affidavit, though it would not be receivable in the court it was sworn in, because the jurat did not state that it had been read over to the party swearing it; but the person administering the oath must prove that the party swearing it in fact understood its contents, and the perjury is complete at the time of the swearing of the affidavit; and whether it is receivable in the court or not is immaterial, if the reason why it is not receivable is, that some formal regulation is not complied with. Rex v. Hailey, 1 C. & P. 258; R. & M. 94—Littledale.

upon been sworn and given evidence on behalf of C., who was really himself, and that evidence formed the ecutor is not in a condition to prove. Ib.

Semble, that a person may be convicted of perjury contained in an affidavit intitled, in a cause, "A. B. against C. D. and others," although, by the rules of the courts, all affidavits should in their title name all the plaintiffs and all the defendants. Reg v. Christian, Car. & M. 388—Denman.

Quære, whether, in an affidavit, the description of the deponent at the commencement of it is a part of what he swears. Reg. v. Chapman, 1 Den. C. C. 432; 2 C. & K. 846; T. & M. 90; 13 Jur. 885; 18 L. J.,

M. C. 152.

But if in an indictment for swearing falsely before a surrogate to obtain a marriage licence, this and other things material are alleged to be falsely sworn (but not alleging the false swearing to be in an affidavit), proof of the false swearing as to any one of the other things will sustain the count. *Ib*.

A party filing a bill for an injunction, and making an affidavit of matters material to it, is indictable for perjury committed in that affidavit, though no motion was ever made for the injunction. Rex v. White, M. & M. 271—Tenterden.

Where perjury was charged to have been committed in that which was in effect the affidavit on an interpleader rule, and the indictment set out the circumstances of the previous trial, the verdict, the judgment, the fieri facias, the levy, the notice by the prisoner to the sheriff not to sell, and the prisoner's affidavit that the goods were his property, but omitted to state that any rule was obtained according to the Interpleader Act (1 & 2 Will. 4, c. 58):—Held, that the indictment was bad, as the affidavit did not appear to have been made in a judicial Reg. v. Bishop, Car. proceeding. & M. 302—Coleridge.

In an indictment for making a false | fore, an indictment for perjury comaffidavit, it is sufficient to state that | mitted in such an affidavit need

the defendant came before A., and took his corporal oath (A. having power to administer an oath), without setting out the nature of A.'s authority. Rew v. Callanan, 6 B. & C. 102; 9 D. & R. 97.

Where perjury is assigned upon several parts of an affidavit, those parts may be set out in the indictment as if continuous, although they are in fact separated by the introduction of other matter. *Ib.* 

Before 17 & 18 Vict. c. 78, a master extraordinary in Chancery had no authority to administer oaths in matters before the Court of Admiralty; and a conviction for perjury in an affidavit used in the Court of Admiralty; but sworn before a master extraordinary in Chancery, could not be supported. Reg. v. Stone, Dears. C. C. 251; 17 Jur. 1106; 23 L. J., M. C. 14.

The 1 & 2 Vict. c. 110, s. 8, contained provisions for filing affidavits of debt against a trader, and his being deemed to have committed an act of bankruptcy on not doing cer-The 5 & 6 Vict. c. tain things. 122, contained other provisions relating to the same matter; and sect. 67 enacts, that affidavits to be made in matters of bankruptcy, or under any statute relating to bankrupts or this act, shall be sworn before a registrar of the Court of Bankruptcy. On an indictment for perjury, upon an affidavit made under 1 & 2 Vict. c. 110, s. 8, and sworn before the registrar of the Court of Bankruptcy:—Held, that 1 & 2 Vict. c. 110, so far as regarded sect. 8, was a statute relating to bankrupts within 5 & 6 Vict. c. 122, s. 67, and that the affidavit related to matters of bankruptcy, and, therefore, was sworn before competent authority. Reg. v. Dunn, 11 Jur. 908; 16 L. J., Q. B. 382; 12 Q. B. 1026.

An affidavit to hold bail may be sworn before the issuing of the writ of summons in the action; and, therefore, an indictment for perjury committed in such an affidavit need not state that any action was pending. King v. Reg. (in error), 3 Cox, C. C. 561; 14 Q. B. 31; 18 L. J., Q. B. 253—Exch. Cham.

An indictment for perjury in an affidavit stated the affidavit to have been sworn "before R. G. W., then and there being a commissioner, duly authorized and empowered to take affidavits in the county of Gloucester, in or concerning any cause depending in the Court of Exchequer at Westminster." It was proved by R. G. W. that he had acted as a commissioner for taking affidavits in the Exchequer for ten years, but had never seen his commission; and that, ten years ago, he applied to his agent to procure for him a commission to take affidavits in the Exchequer, and that his agent had told him that he had done so:—Held, that the proof of R. G. W.'s acting as a commissioner was primâ facie evidence that he was so. Reg. v. Newton, 1 C. & K. 469—Atcherley, Serjt.

F. was indicted for perjury, committed by deposing to an affidavit in a cause wherein he was the plaintiff, and E. the defendant, that he owed him 50l.:—Held, that, in support of this indictment, evidence was not admissible, that the cause of F. against E. was, after the making of the affidavit, referred by consent, and an award made that E. owed nothing to F. Reg. v Moreau, 11 Q. B. 1028; 12 Jur. 626; 17

L. J., Q. B. 187.

In perjury, the affidavit of service of notice or application for leave to issue execution against a shareholder in a joint stock company is insufficient evidence not having the notice annexed to it. Reg. v. Hudson, 1 F. & F. 56—Cockburn.

## 3. Before Justices.

An information founded on 1 & 2 Will. 4, c. 32, after stating an appearance and information by O. M. against R. R., proceeded thus:

also verified upon the oath of W. A., of &c., another credible witness, before me the said justice, hereupon O. M. prays that R. R. may be forthwith summoned, &c.

"Exhibited by O. M., and sworn before me (O. M. the day and year first (W. A. above written

"W. É. C."

The party informed against having appeared before two justices, evidence was given by a witness for An indictment for perjury having been preferred against this witness, upon which he was found guilty:-Held, that the proceeding before the two justices was informal for want of a deposition on oath of the charge contained in the information, in pursuance of 6 & 7 Will. 4, c. 65; and that, therefore, the indictment could not be sustained. Reg. v. Scotton, 5 Q. B. 493; D. & M. 501; 8 Jur. 400.

But where an information, not upon oath, was laid before a justice of the peace under the Malicious Trespass Act, 7 & 8 Geo. 4, c. 30, s. 24, who thereupon issued a summons to the party charged. at the hearing the prisoners were examined as witnesses, and upon the evidence which they gave perjury was subsequently assigned:— Held, that the hearing before the magistrates was a judicial proceeding, and that jurisdiction was given by the 24th section, although the information was not upon oath. Reg. v. Millard, 17 Jur. 400; Dears. C. C. 166; 22 L. J., M. C. 108; 6 Cox, C. C. 150.

In a case of perjury committed ' before magistrates, the indictment merely stated that the defendant, intending to subject W. M. to the penalties for felony, went before two magistrates, and "did depose and swear," &c., setting out a deposition, which stated, that W. B. had put his hand into the defendant's pocket and taken out a 51. "And the information having been | note, and assigning perjury upon it:

—Held, that this was bad, as it did not shew that any charge of felony had been previously made, or that the defendant then made any charge of felony, or that any judicial proceeding was pending before the magistrate. Reg. v. Pearson, 8 C. & P. 119—Coleridge.

In an indictment for perjury, alleged to have been committed on the hearing of an information under the Beer Act, 11 Geo. 4, & 1 Will. 4, c. 64, s. 15, it is necessary to aver that the justices were acting in and for the division or place in which the house is situated; but it is not necessary to aver that they were acting in petty sessions, as every meeting of two justices in one place for business is itself a petty sessions. Reg. v. Rawlins, 8 C. & P. 439—Park and Patteson.

An indictment alleged that after 18 & 19 Vict. c. 118, K. was duly summoned to appear before certain justices, being and acting as two justices of the peace in and for a county, to answer before such justices a certain information and complaint against him, of having opened his house (a beer-house) on a Sunday, for the sale of beer, after three and before five in the afternoon; that K. duly appeared before the justices at the petty sessions of a petty sessional division in the county, and that at the hearing, the defendant being called as a witness for K. falsely swore that he had not been in the house of K. at all that day; that he had never seen a certain policeman, and had not been in B. that day, or for a fortnight be-At the trial it appeared that no information had been laid in support of the summons, but that a superintendent of police had stated certain facts to the magistrate's clerk, who had filled up a blank summons against K., which a magistrate had signed without making The summons was any inquiry. not produced. A policeman swore to the fact of the defendant having

been in K.'s house between the prohibited hours, and to confirm him one witness swore he had seen the defendant in B. at two o'clock in the afternoon of the same day; and another swore that she had seen him there between three and four on the same day, on the road leading and close to K.'s beer-house:—Held, that it was sufficiently alleged in the indictment that the offence was one over which the justices had ju-, risdiction, and that it was committed in a place where they had jurisdiction; that the production of an information at the trial was not necessary, and that the corroborative evidence was sufficient. Req. v. Shaw, L. & C. 579; 10 Cox, C. C. 66; 11 Jur., N. S. 415; 34 L. J., M. C. 169; 13 W. R. 692; 12 L. T., N. S. 470.

Perjury was committed before magistrates, upon the second application for a bastardy order, a former application having been dismissed on the merits:—Held, that the magistrates had jurisdiction, and that the prisoners were properly convicted. Reg. v. Cooke, 2 Den. C. C. 462; 16 Jur. 434; 21 L. J., M. C. 136.

A summons, after the birth of a child, under 7 & 8 Vict. c. 101, s. 2, against the putative father, was issued on the personal application of the mother of the bastard child, not upon oath. The putative father appeared to the summons, and defended the case on the merits, without objecting that the summons had issued on the statement of the woman, not on oath:—Held, that the putative father could not afterwards raise the objection; and that he was liable to be indicted for perjury committed by him on the hearing of the summons. Berry, 8 Cox, C. C. 121; 5 Jur., N. S. 320; Bell, C. C. 46; S. P., Reg. v. Simmons, Bell, C. C. 168; 8 Cox, C. C. 190; 5 Jur., N. S. 578.

Held, also, that evidence of pay-

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ment of money by the putative father within twelve months of the birth of the child, being evidence of the paternity, was a material fact on the hearing of the summons. Ib.

The mother of a bastard, having been resident with her parents in one petty sessional division, went to lodge at D. in another division for the purpose of affiliating her child, D. being nearer and more convenient for her than the place where the magistrates acting for the other division met. She lodged at D. three weeks before she obtained the summons, having in the interval made one unsuccessful application; and after obtaining the order went into service in the division in which her parents resided, but without returning to them; and she stated that she could not go back to them as they had nothing for her to do. Whilst at D. she had no other home:—Held, that the jury was warranted in finding that at the time of her application to the magistrates at D, she was residing within that petty sessional division; that consequently the magistrates had jurisdiction, and a conviction for perjury committed by her on that occasion was right. Reg. v. Hughes, 7 Cox, C. C. 286; Dears. & B. C. C. 188.

After the expiration of his term of apprenticeship, an apprentice summoned his master before a magistrate for neglecting to pay his wages, and upon the hearing of the complaint under 4 Geo. 4, c. 34, s. 2, the apprentice gave false evidence:-Held, that whether the 4 Geo. 4, c. 34, s. 2, required or not the complaint to be made before the expiration of the apprenticeship, the magistrate having general jurisdiction over the subject of complaint, perjury could be assigned on the false evidence given before him. Reg. v. Proud, 16 L.T., N.S. 364; 10 Cox, C. C. 455; 1 L. R., C. C. 71; 36 L. J., M. C. 62; 15 W. R. 796.

4. Before Surrogates.

The taking of a false oath before a surrogate, to procure a marriage licence, will not support a prosecution for perjury. Rex v. Foster, R. & R. C. C. 459.

If an indictment for taking a false oath before a surrogate, to procure a marriage licence, only charges the taking of false oath, without stating it was for the purpose of procuring a licence, or that a licence was procured thereby, the party cannot be punished thereon

as for a misdemeanor. Ib.

A. was indicted for making a false oath before a surrogate, for the purpose of obtaining a marriage licence:—Held, first, that a surrogate has a general power to administer an oath in that behalf, so as to make a false oath a misdemeanor. Reg. v. Chapman, 1 Den. C. C. 432; T. & M. 90; 2 C. & K. 846; 13 Jur. 885; 18 L. J., M. C. 152.

Held, secondly, that such false oath is a misdemeanor, as being made with a fraudulent intention, in a matter of public concern. *Ib*.

Held, thirdly, that it was immaterial whether the marriage actually took place or not. *Ib*.

An illegitimate child being filius nullius, an indictment charging a defendant with taking a false oath before a surrogate, and that E. was the natural and lawful father of E. E., and that his consent was necessary as such father, under 4 Geo. 4, c. 76, cannot be sustained. Reg. v. Fairlie, 9 Cox, C. C. 209—Gurney, Recorder.

## 5. Before Arbitrators.

Where perjury is assigned upon evidence given before an arbitrator, upon a reference at Nisi Prius, of a cause and all matters in difference between the parties, it must be distinctly shewn whether the evidence was material in respect of the matters in issue in the cause, or of the other matters in difference between

the parties. Reg. v. Ball, 6 Cox, C. C. 360.

A., a defendant in a suit tried before a county court judge, gave false evidence before an arbitrator, to whom the suit was referred, and by whom A. was sworn: — Held, before 14 & 15 Vict. c. 99, s. 16, that under 9 & 10 Vict. c. 95, s. 77, the arbitrator had no authority to administer an oath, and therefore A. was not liable to be indicted for perjury. Reg. v. Hallett, 2 Den. C. C. 237; T. & M. 563; 15 Jur. 433; 20 L. J., M. C. 197; 5 Cox, C. C. 238.

A cause was referred by a judge's order to C. D.; and by the order it was directed that the witnesses should be sworn before a judge, "or before a commissioner duly authorized." A witness was sworn before a commissioner for taking affidavits, and examined vivâ voce by the arbitrator:—Held, that a witness so sworn was not indictable for perjury. Rew v. Hanks, 3 C. & P. 419—Gaselee.

## 6. Indictment and Information.

Form.]—The 23 Geo. 2, c. 11, " provides for the more easy fram-"ing of indictments for perjury; "and by 14 & 15 Vict. c. 100, s. "20, in every indictment for per-"jury, or for unlawfully, wilfully, "falsely, fraudulently, deceitfully, "maliciously, or corruptly taking, "making, signing, or subscribing "any oath, affirmation, declaration, "affidavit, deposition, bill, answer, "notice, certificate, or other writ-"ing, it shall be sufficient to set "forth the substance of the offence "charged upon the defendant, and "by what court, or before whom "the oath, affirmation, declaration, "affidavit, deposition, bill, answer, "notice, certificate, or other writ-"ing was taken, made, signed, or "subscribed, without setting forth "the bill, answer, information, in-"dictment, declaration, or any part "of any proceeding, either in law named of Digitized by Microsoft®

" or in equity, and without setting forth the commission or authority of the court, or person before whom such offence was committed."

By s. 21, "in every indictment "for subornation of perjury, or for " corrupt bargaining or contracting " with any person to commit wilful "and corrupt perjury, or for incit-"ing, causing, or procuring any person unlawfully, wilfully, false-" ly, fraudulently, deceitfully, ma-"liciously or corruptly to take, "make, sign, or subscribe any oath, "affirmation, declaration, affidavit, "deposition, bill, answer, notice, certificate or other writing, it "shall be sufficient whenever such "perjury, or other offence afore-said, shall have been actually "committed, to allege the offence "of the person who actually com-"mitted such perjury or other of-"fence in the manner hereinbefore "mentioned, and then to allege that "the defendant unlawfully, wilful-"ly, and corruptly did cause and "procure the said person the said " offence, in manner and form afore-"said, to do and commit; and "whenever such perjury, or other "offence aforesaid, shall not have "been actually committed, it shall "be sufficient to set forth the sub-" stance of the offence charged upon "the defendant, without setting "forth or averring any of the mat-"ters or things rendered unneces-"sary to be set forth or averred in "the case of wilful and corrupt " perjury."

By s. 30, "indictment includes information."

Allegations.]—In an indictment for perjury committed at an admiralty session, where the commission was directed to A., B. and C., and others not named, of whom A., B. and C. were amongst others to be one; the court will take it to mean, that, if either of the persons named of the quorum was present,

it would be sufficient. Rex v. Dowlin, 5 T. R. 311; S. C. (at Nisi

Prius), Peake, 170.

Stating that at such a court (a court of admiralty session), K. was in due form of law tried upon a certain indictment then and there depending against him for murder, and that at and upon the trial it then and there became and was made a material question, whether, &c., are sufficient averments that the perjury was committed on the trial of K. for the murder, and that the question on which the perjury was assigned was material on that trial.

It is not necessary to set forth so much of the proceedings of the former trial as will show the materiality of the question on which the perjury is assigned; it is sufficient to allege generally that the particular question became material. Ib.

In an indictment for perjury, the necessity for shewing distinctly that the false oath is in a judicial proceeding is not dispensed with by 23 Geo. 2, c. 11, s. 1. Overton v. Reg. (in error), 4 Q. B. 83; 3 G. & D. 133; 7 Jur. 196; 12 L. J., M. C. 61.

An indictment averring that "in the White-chapel County Court of Middlesex, holden before J. M., judge of the court, an action, then pending in the court, came on to be tried, that the defendant was sworn as a witness before J. M., being judge of the said county court, and, having sufficient and competent authority to administer the said oath"; and then perjury was assigned, sufficiently shews on the face of the indictment that the court was properly constituted under 9 & 10 Vict. c. 95, and that the judge had jurisdiction over the cause in which the perjury was alleged to have been committed. Lavey v. Reg. (in error), 17 Q. B. 496; 2 Den. C. C. 504; 16 Jur.

C. 259—Exch. Cham.; S. P., Reg. v. Lawlor, 6 Cox, C. C. 187.

Where, to give magistrates jurisdiction to hear a case punishable on summary conviction, it is essential that they should have an information on oath made before them, it is not sufficient in an indictment for perjury, alleged to have been committed on the hearing of such information, to allege that before M. G., esq., and T. H. H. clerk, two of the justices, &c., the magistrates who heard the case, J. O. came and exhibited a certain information upon oath, because it does not sufficiently show that J. O. was sworn before M. G. and T. H. H. v. Goodfellow, Car. & M. 569— Patteson.

An averment, that it became and was material to ascertain the truth of the matter hereinafter alleged to have been sworn to, and stated by J. G. upon his oath, is not a good averment of materiality. Ib.

An indictment contained four counts, each of which stated, that for the defendant on his retainer V. had done business as attorney; that V. delivered his bill, and after the expiration of one month from such delivery took out a summons before a judge, under 6 & 7 Vict. c. 73, to shew cause why the bill should not be referred for taxation; that it then and there became and was material in shewing cause to ascertain whether the defendant did retain V.; and that he, before shewing cause, made an affidavit, denying that he had retained V., and assigned perjury on such affidavit. Each of the counts concluded, "and so the jurors aforesaid did say, that the defendant did commit perjury." The record stated the writ of venire to try whether the defendant "be guilty of the perjury and misdemeanor aforesaid," and the verdict, that "he is guilty of the perjury and misdemeanor aforesaid," and a general judgment 36; 21 L. J., M. C. 10; 5 Cox, C. | thereon:—Held, first, that as the counts all referred to the statute, the word "month" was to be construed according to the interpretation clause, and meant calendar month. Ryalls v. Reg. (in error), 11 Q. B. 781; 13 Jur. 259; 18 L. J., M. C. 69; 3 Cox, C. C. 254— Exch. Cham., affirming the judgment of the Q. B.: S. C., 12 Jur. 458; 17 L. J., M. C. 93.

Held, secondly, that the jurisdiction was sufficiently shewn on the indictment, without negativing a prior application to have the costs taxed by the party chargeable, in which case only the act authorizes an application to the judge by the

attorney. Ib.

Held, thirdly, that the fact of the retainer by the defendant was a material ingredient in the inquiry, and was sufficiently averred. Ib.

Held, fourthly, that the averment at the conclusion of each count was immaterial, and might be struck out as surplusage. *Ib*.

Held, fifthly, that the word "misdemeanor" was nomen collectivum; and that, therefore, the venire and verdict applied to all the counts; and the judgment, being for imprisonment only, was divisible. Ib.

An indictment which charges that the prisoner "feloniously, corruptly, knowingly, wilfully, and mali-ciously swore," omitting the word "falsely," but concluding, "and so the defendant in manner and form aforesaid did commit wilful and corrupt perjury," is bad. Reg. v.Oxley, 3 C. & K. 317—Cresswell.

An indictment alleged that a petition was presented to the House of Commons against the return of B., on the ground of bribery; that, shortly before his election, to wit, on the 6th July, B. and C. went to the house of the defendant to solicit his vote; that, at the time of the petition, it was a material question whether at the time when B. and C. went to the defendant's house, a certain act of bribery took place; magistrate and was sworn, and that

that the defendant was a witness sworn to speak the truth of and concerning the premises, and he deposed touching the election and the matter of the petition, that shortly before B.'s election, B. and C. came on a canvassing visit to the defendant's house, and that the act of bribery then took place (innuendo), thereby meaning that at the time when B. and C. went to the defendant's house as aforesaid, the act of bribery was committed: -Held, on motion in arrest of judgment: first, that the allegation that the defendant deposed "touching the election," &c., sufficiently pointed to the matter whereupon the defendant was sworn as a witness; secondly, that the innuendo did not introduce new matter, as from the introductory averment it appeared there was a canvassing visit on the 6th July, and the deposition of the defendant was shewn to refer to that particular time and no other. Reg. v. Verrier or Virrier, 4 P. & D. 161; 12 A. & E. 317.

If an indictment undertakes to set out continuously the substance and effect of what the defendant swore when examined as a witness, it is necessary to prove that in substance and effect he swore the whole of that which is thus set out, though the indictment contains several distinct assignments of perjury. Rexv. Leefe, 2 Camp. 134 — Ellenborough.

In an indictment there must be an allegation of time and place, which are sometimes material, and necessary to be laid with precision, and sometimes not. Rex v. Aylett, 1 T. R. 63.

It is sufficiently certain if it is stated that the defendant was in due manner sworn. Rex v. M. Carther, Peake, 155—Kenyon.

An indictment for perjury committed before a magistrate, stating that the defendant went before the

he did falsely, &c. "say, depose, swear, charge and give the justice to be informed," that he saw the prosecutor commit bestiality, sufficiently shews that the oath was taken in a judicial proceeding; and it being also stated in the indictment that it was material "to know the state of the said A. B.'s dress at the time the offence was so charged to be committed as aforesaid," is a sufficient averment of materiality to allow the prosecutor to shew that the flap of his trousers was not unbuttoned (as sworn by the defendant), and that his trousers had no flap. Reg. v. Gardiner, 8 C. & P. 737; 2 M. C. C. 95.

An indictment charging that the defendant falsely and maliciously gave false testimony, without averring that the offence was wilfully or that it was corruptly committed, is bad in arrest of judgment. Rex v. Richards, 7 D. & R. 665; S. C., nom. Rex v. Stevens, 5 B. & C. 246.

Another count alleging that at the trial of the prosecutor he was found guilty by means of the false and malicious testimony of the defendant in the first count mentioned; that, on a rule nisi for a new trial, the defendant knowingly, falsely, wilfully and corruptly made an affidavit that the evidence given by him at the trial was true, "whereas it was false in the particulars in the first count assigned and set forth," is also bad, for it should have averred distinctly that the defendant was sworn as a witness, and deposed to certain facts at the trial, instead of leaving it to be taken by intendment. 1 b.

information for perjury, charging that the defendant, before a committee of the House of Commons, being duly sworn, "knowingingly and deliberately, and of his own act and consent, did depose and swear" to certain facts set forth in the information; and that he afterwards, at the bar of the House of Lords, being duly sworn, "know-between the hours of six o'clock and

ingly, &c., did swear" to certain facts contradicting what he had previously sworn before the committee of the House of Commons; with a conclusion, "and so the defendant, in manner and form aforesaid, did commit wilful and corrupt perjury"; cannot be sustained, and is bad in arrest of judgment. Rex v. Harris, 1 D. & R. 578; 5 B. & A. 926.

Where, upon an indictment for perjury, on a trial for felony, it neither appeared that the matter sworn was material, nor was it alleged to be so:—Held, that if the original indictment had been set out, and the materiality could plainly have been collected, it would have been sufficient without any special averment, but that one or the other was absolutely necessary. Rex v. Dunn, 1 D. & R. 10.

The word "wilful" is not necessary in an indictment for perjury at common law. Rex v. Cox, 1 Leach, C. C. 71.

But it is otherwise in an indictment for perjury on 5 Eliz. c. 9. Ib.

An indictment stating that the defendant swore that a particular fact occurred on the day on which a certain memorandum bore date, and at the time of making a certain bill of exchange, without averring that they were the same days; and the assignment of perjury alleged that the fact did not occur on the day on which the memorandum bore date, is uncertain, and therefore bad. Reg. v. Burraston, 4 Jur. 697—Q.

An indictment, in which it is intended to assign perjury upon several statements in the defendant's evidence relating to several different matters, should allege that there were several material questions, and certain distinct and separate assignments of falsehood upon each.

When an indictment alleged that R. W. falsely swore that "he was in the bar of the House of J. B. on the 15th of February last, from

seven o'clock in the evening of the said last-mentioned day, until nine o'clock in the evening of the said last-mentioned day, and that he, R. W., did not then and there play at any game of cards at all ":-Held, that perjury was not sufficiently assigned by an averment that "the said R. W. did then and there (to wit) in the said bar of the said house and premises of the said J. B. on the said 15th day of February last, and between the hours of six o'clock in the evening of the said last - mentioned day, and eight o'clock in the evening of the said last-mentioned day, play at a certain game of cards." Reg. v. Whitehouse, 3 Cox, C. C. 86—Rolfe.

An indictment alleged that a cause was pending in a county court, and that at the hearing it became a material question whether the plaintiff in the cause had, in the presence of the prisoner, signed at the foot of a bill of account, purporting to be a bill of account between a firm called B. & Co. and W., a receipt for payment of the amount of the bill; and that the prisoner falsely swore that the plaintiff did, on a certain day, in the presence of the prisoner, sign the receipt (meaning a receipt at the foot of the first-mentioned bill of account) for the payment of the amount of the bill. The plaintiff in the county court had on other occasions signed similar receipts in the presence of the prisoner:—Held, that the bill of account was stated and set forth in the indictment with sufficient certainty. Reg. v. Webster, Bell, C. C. 154; 5 Jur., N. S. 604; 28 L. J., M. C. 200; 7 W. R. 449; 8 Cox, C. C. 187.

It is not a sufficiently precise allegation upon which to found an indictment for perjury that the prisoner swore that a certain event did not happen within two fixed dates, his attention not having been called to the particular day upon which the transaction was alleged to have

taken place. Reg. v. Stolady, 1 F. & F. 518—Pollock.

An indictment charged that a petition for protection from process was under 5 & 6 Vict. c. 116, 7 & 8 Vict. c. 96, and 10 & 11 Vict. c. 102 (Insolvent Debtors' Acts), filed and presented at the county court of S., at W., by the defendant; that he afterwards obtained an order of protection; but afterwards, while the proceedings were pending in the county court, to wit, at the time of the filing the petition and schedule, he came before K., a commissioner administer oaths in chancery, duly appointed and empowered to act in the matter of the insolvent, and take the defendant's oath then and there at the county court, and within the jurisdiction aforesaid, for the purpose of making an affidavit, and verifying his petition on oath, and was duly sworn before K., and swore and took his oath that the affidavit then made was true, K. having competent power and authority to administer the oath. The indictment then alleged that certain matter was material in the matter of the insolvency, and that the affidavit was false in respect thereof, the defendant was convicted, and judgment passed:—Held, that the jurisdiction of the court sufficiently appeared, though there was no express allegation that the defendant had resided for six calendar months before the filing of the petition within the district of the county court, as required by 11 & 12 Vict. c. 102, s. 6. Walker v. Reg. (in error), 8 El. & Bl. 439; 3 Jur., N. S. 1259; 27 L. J., M. C. 43.

A person was indicted for wilful and corrupt perjury in making a false affidavit before a commissioner for taking oaths in the court of Queen's Bench, for the purpose of getting a bill of sale filed under the Bills of Sale Act, 1854:—Held, a misdemeanor, though not wilful and

corrupt perjury, and that the conclusion of an indictment for perjury, "that so the defendant did commit wilful and corrupt perjury" might be rejected as surplusage, and a conviction for the misdemeanor was right upon such an indictment. Reg. v. Hodgkiss, 3 9 L. J., M. C. 14; L. R., C. C. 212; 18 W. R. 150; 21 L. T., N. S. 564.

Materiality of Assignments. —It is not necessary expressly to aver materiality in any indictment for perjury. It will be sufficient if materiality is clearly disclosed by the facts as stated on the face of the indictment. If materiality is not sufficiently averred, or apparent, the defect is not cured by 14 & 15 Vict. c. 100, s. 20. Nor is it such a defect as the judge will amend un-der sec. 25. Reg. v. Harvey, 8 Cox, C. C. 99—Byles.

A variance between the form of oath proved and that stated in the indictment is immaterial. The circumstance that the statement may probably influence the person to decide will not make it material, if not legally material, to the matter under consideration. The question of materiality is for the judge. Reg. v. Southwood, 1 F. & F. 356 -Watson.

An indictment for perjury alleged as committed on the trial of an issue in a cause, with averments of materiality to such issue, is sustained, although it appears that there were several issues in the cause. Reg. v. Smith, 1 F. & F. 98—Erle.

On an assignment of perjury by a defendant in a bastardy case, that he had never kissed the prosecutrix, the question of materiality is for the Reg. v. Goddard, 2 F. & F. jury. 361—Wightman.

An indictment stated that it became a material question, whether, on the occasion of a certain alleged arrest, L. touched K.; and the de-

L. put his arms round him and embraced him; innuendo that L. had, on the occasion to which the said evidence applied, touched the person of K :- Held, that the materiality of the evidence did not sufficiently appear. Rex v. Nicholl, 1 B. & Ad. 21.

It is not a sufficiently precise allegation upon which to found an indictment for perjury that the prisoner swore that a certain event did not happen within two fixed dates, his attention not having been called to the particular day upon which the transaction was alleged to have taken place. Reg. v. Stolady, 1 F. & F. 518—Pollock.

An indictment alleging that one E. S. had filed a bill in chancery against the defendant J. C. and others, wherein he prayed that the defendant J. C. might answer the premises; that a purchase by J. C. of certain property belonging to the other defendants might be declared fraudulent and void; and that it then and there became a material question whether the said J. C. did advise the said other defendants that the said property should be sold; and that the said J. C. falsely and corruptly swore, and in and by his answer denied, that he had so advised, is bad in arrest of judgment, for want of a sufficient averment of materiality. Reg. v. Cutts, 4 Cox, C. C. 435—Q. B.

A., in an affidavit, stated that he had paid all the debts proved under his bankruptcy, except two, as to which he explained. On an indictment for perjury on this affidavit, one of the assignments of perjury was, that A. had not paid all the debts proved under bis bankruptcy, except two; and another, that certain creditors, naming them, besides the excepted two, were not paid in full:—Held, that if the first assignment was too general, the defendant should have demurred to it; and that, although by the generality fendant's evidence as set out was:— of its form the prosecutor was not precluded from proving the nonpayment of other creditors besides those named, yet, as names were stated in the other assignment, it was reasonable to presume that the defendant would suppose that they were the persons, the non-payment of whose debts was to be relied on; and that in fairness the prosecutor ought not to go into evidence of the non-payment of any other creditors than those named. Reg. v. Parker, Car. & M. 639—Tindal.

An indictment stated that stood charged by F. W., before T. S., clerk, a justice of the peace, with having committed a trespass, by entering and being in the daytime on land in pursuit of game, on the 12th August, 1843; and that T. S. proceeded to the hearing of the charge; and that, upon the hearing of the charge, the defendant falsely swore that he did not see L. during the whole of the 12th August, meaning that he did not see L. at all on the 12th day of August, in the year aforesaid; and that, at the time he swore as aforesaid, it was material or necessary for T. S., so being such justice, to inquire of, and be informed by the defendant, whether he did see L. at all during the 12th day of August, in the year aforesaid: Held, that this averment of materiality was insufficient, because, consistently with this averment, it might have been material for T. S. in some other matter, and not in the matter stated to have been in issue before him, to have put this question and received this Reg. v. Bartholomew, 1 C. answer. & K. 366.

In an indictment it was alleged to be a material question whether or not the prisoner ever got one Milo Williams to write a letter for her; and in the averments, negativing the truth of what was sworn, the indictment alleged that, in truth and fact, the said Mary Ann Bennett did get the said Milo Williams, and

at the trial, when the alleged perjury was committed, she was asked whether she had ever got a Mr. Milo Williams (who was then pointed out to her in court) to write a letter for her:—Held, that the averments were sufficient, without any allegation connecting the "one Milo Williams" named in the allegations of materiality, and the averments negativing the truth of what was sworn, with the "Mr. Milo Williams" named in the subsequent part of the indictment. Reg. v. Bennett, 3 C. & K. 124; 2 Den. C. C. 241; T. & M. 567; 15 Jur. 497; 20 L. J., M. C. 217; 5 Cox, C. C. 207.

In an indictment for perjury, an express averment that a question was material lets in evidence to prove that it was so. 16.

In an indictment, the assignment was that the defendant upon his oath did swear "that he then thought that the words written in red ink were not his writing, and that he had not in the presence of W. D. written the words so written in red ink, whereas in truth and in fact the words so written in red ink were the defendant's writing, and whereas also, in truth and in fact, he then and there, when he so deposed as aforesaid, thought that the words so written in red ink as aforesaid were his writing":—Held, that perjury might be assigned upon the deposition of the defendant. Reg.v. Schlesinger, 10 Q. B. 670; 12 Jur. 283; 17 L. J., M. C. 29; 2 Cox. C. C. 200.

Held, also, that the materiality of the allegation that the defendant wrote the words in the presence of W. D. being averred, the court would not inquire into it. Ib.

On an indictment for perjury alleged to have been committed in answer to a certain interrogatory exhibited in a suit in the Ecclesiastical Court, it appeared that a suit for divorce, on the ground of adulthat when, on her cross-examination tery, had been instituted against the prosecutor by his wife; that the de- | C. 264; 20 L. T., N. S. 403—C. C. fendant was a witness examined on behalf of the wife to prove her case; that cross interrogatories were exhibited to him by the prosecutor by way of cross-examination, one of which, put for the purpose of impeaching his character, was the following:—" Have you not passed by the name of Abbott, and also of Johnson?" His answer was, "I have never passed by the assumed name of Abbott or Johnson." was clearly proved that he had:— Held, that the question and answer were not sufficiently material to the issue to warrant the case going to the jury. Reg. v. Worley, 3 Cox, C. C. 535—Denman.

At the trial of an action of trover by P. against the prisoner for some steel, the defence was that P., while the steel was lying at a railway station, sent for it, and signed a delivery note on receiving it, and then sold it to the prisoner. The prisoner, a witness, swore that the name, P., on the delivery note, was P.'s writing, and that he saw him write it. The prisoner was indicted for perjury upon this evidence and found guilty:-Held, that the signature to the delivery note was material evidence in the action, upon which perju- Reg. v. Tate, 12 Cox, C. C. 7. ry could be assigned. Reg. v. Naylor, 17 L. T., N. S. 582; 16 W. R. 374; 11 Cox, C. C. 13—C. C. R.

Upon the trial of C. for perjury, committed in an affidavit, proof was given that the signature to the affidavit was in his handwriting, and there was no other proof that be was the person who made the affi-The prisoner was then called, and swore that the affidavit was used before the taxing master, that C. was then present, and that it was publicly mentioned, so that everybody present must have heard it, that the affidavit was C.'s:—Held, that the matters sworn were material upon the trial of C. Reg. v. Alsop, 17 W. R. 621; 11 Cox, C.

S. was indicted for robbery on April 13, at 8.45 p.m., and the prisoner swore that S. was in a house at a distant place at that time, and that S. had lodged at that house nearly two years, and had never been away for more than two or three nights at a time during that period. The prisoner was indicted for perjury on that evidence, and convicted on the assignments of perjury, as to S. having lodged at the house for two years, and never having been away more than two or three nights at a time:—Held, that the evidence on these points was material, as tending to induce the jury to give greater credit to the substantial fact of his being there on the 13th of April at the time in question. Reg. v. Tyson, 17 L. T.,N. S. 292; 1 L. R., C. C. 107; 37 L. J., M. C. 7; 16 W. R. 317; 11 Cox, C. C. 1.

An indictment for perjury was held to be bad for immateriality. The charge being for assault, the assignment of perjury not being relevant to the charge and affording no grounds of legal justification, was therefore not legally material.

## 7. Amendment of Variances.

If materiality is not sufficiently averred, or apparent, the defect is not cured by 14 & 15 Vict. c. 100, s. 20. Nor is it such a defect as the judge will amend under s. 25. Reg. v. Harvey, 8 Cox, C. C. 99— Byles.

The judge at the trial of an indictment for perjury has power to amend an inaccurate description of the time of passing a statute referred to in the indictment. Reg. v. Westley, 5 Jur., N. S. 1362; Bell, C. C. 193; 29 L. J., M. C. 35.

Where the title of an act of parliament is not accurately stated, but still so stated as to enable the judges to know that there can be but one act referred to, such misstatement is immaterial. *Ib*.

On a charge of perjury alleged to have been committed before commissioners to examine witnesses in Chancery suit, the indictment stated that the four commissioners were commanded to examine the Their commission was witnesses. put in, and by it the commissioners, or any three or two of them, were commanded to examine the witnesses:—Held, a fatal variance, and the judge would not allow it to be amended under 9 Geo. 4, e. Reg. v. Hewins, 9 C. & P. 786—Coleridge.

An indictment for perjury, alleged to have been committed on the trial of S. S., averred that the trial took place at the Assizes and General Sessions of the Delivery of the Gaol of our Lady the Queen for the county of S., before John Lord Campbell, C. J., of our Lady the Queen, assigned to hold pleas before the Queen herself, and Sir E. V. Williams, Knt., one of the justices of our Lady the Queen, of her Court of Common Pleas, assigned to deliver the gaol of the prisoners therein being. It being objected that this was a defective description, as alleging a court with an impossible combination of civil and criminal jurisdiction:—Held, that the word" assizes" might be struck out Reg. v. Child, 5 as surplusage. Cox, C. C. 197.

It being also objected that the words "assigned to deliver the gaol of the prisoners therein being," referred only to the last-named judge:
—Held, that the indictment might be amended by the record of the conviction of S. S., by inserting after the words "Common Pleas, and others their fellows, justices," assigned to deliver the gaol. Ib.

The record of the conviction of S. S. described the court as a general session of over and terminer

and gaol delivery. It also described the charge against S. S. as for eutting and wounding; the indietment describing it as for wounding:
—Held, that these variances might also be amended. *Ib*.

In an indictment for perjury, the perjury was alleged to have been committed on the trial of an indictment against B., for setting fire to a certain barn of P. In support of In support of the averment, a certificate of the trial and conviction of B. was produced, but the offence there mentioned was setting fire to "one stack of barley." The offence was, in fact, the same, the barn and the stack having been destroyed by one fire:—Held, that the indictment might be amended under 14 & 15 Viet. e. 100, s. 1. Reg. v. Neville, 6 Cox, C. C. 69—Williams.

### 8. Evidence.

In perjury committed in an answer in Chancery, it is sufficient proof of the fact of swearing and the identity of the defendant, to prove the handwriting subscribed to the answer, and that the jurat was subscribed by the master as being sworn before him. Rex v. Morris, 1 Leach, C. C. 50; S. P., Rex v. Benson, 2 Camp. 508; Rex v. Morris, 2 Burr. 1189.

On an indictment for perjury, in an answer to a bill in Chancery, the proving the handwriting of the signature of the person who administered the oath, is sufficient proof that it was sworn; and if the place at which such answer purported to have been sworn is in the jurat, it is sufficient evidence that the oath was administered at that place. Rew v. Spencer, 1 C. & P. 260; R. & M. 97—Abbott.

If the perjury is committed at the trial of a cause, the prosecutor must prove the whole of the defendant's testimony. Rex v. Jones, Peake, 37—Kenyon.

Unless the point upon which the

perjury is assigned arose upon the defendant's cross-examination. Rex v. Dowlin, Peake, 170.

In an indictment for perjury committed on the trial of a cause, it is sufficient for the prosecutor to prove all the evidence given by the defendant, referable to the fact on which perjury is assigned. Rex v. Rowley, R. & M. 299—Littledale.

An affidavit purporting to be sworn before a public commissioner is admissible on the trial of an indictment for perjury without proof of the commission; proof of the commissioner's acting as such is Rex v. Howard, 1 M. & sufficient. Rob. 187; S. P., Rex v. Verelst, 3 Camp. 432.

To shew that perjury was wilful and corrupt, evidence may be given of expressions of malice used by the party towards the person against whom he gave the false evidence. Rex v. Munton, 3 C. & P. 498—

Tenterden.

If A. is indicted for perjury, in swearing that he did not enter into a verbal agreement with B. and C. for them to become joint dealers and co-partners in the trade or business of druggists; and it appears that, in fact, B. was a druggist, keeping a shop with which A. had nothing to do; but that A. and C., being sworn brokers, could not trade, and therefore made speculations in drugs in B.'s name with his consent, he agreeing to divide profits and losses with A. & C.; this will not support the indictment, as this is not the sort of partnership denied by A. upon oath. Rex v. Tucker, 2 C. & P. 500—Abbott.

Where perjury is assigned upon a written instrument, subsequently lost, secondary evidence is admissi-Reg. v. Milnes, 2 F. & F. 10 ble.

On the trial of an indictment for perjury, alleged to have been committed on the trial of an indictment for an assault, all the evidence that was admissible on the trial of the in- | the defendants on the former trial,

dictment for the assault is admissible on the trial of the indictment for perjury. Reg. v. Harrison, 9 Cox, C. C. 503—Bramwell.

Proof that the defendant was "sworn and examined as a witness," supports an averment that he was sworn on the Holy Gospel, that being the ordinary mode of swearing. Rex v. Rowley, R. & M. 299—Lit-But see Rex v. M' Carther, tledale.

Peake, 155.

If an indictment contains several assignments of perjury, on one of which no evidence is given on the part of the prosecution, the defendant cannot go into proof to shew that the evidence charged by that assignment of perjury to be false, was in reality true. Rex v. Hemp, 5 C. & P. 468—Denman.

On the trial of an indictment for perjury the witnesses to character were asked, "What is the character of the defendant for veracity and honour?"—and "Do you consider him a man likely to commit perjury ?" Ib.

A person in his deposition before a magistrate deposed to several material facts in a case of larceny. When called as a witness at the quarter sessions on the trial of the larceny, he contradicted every statement he had made before the magistrate. In an indictment for perjury, his evidence on the trial at the quarter sessions was charged to be false:— Held, that the deposition before the magistrate was not, by itself, sufficient proof that the evidence on the trial at the quarter sessions was false, but that other confirmatory evidence must be given, to satisfy the jury that the statements made by the party at the quarter sessions were, in point of fact, false, or that the statements in the deposition were, in point of fact, true. Wheatland, 8 C. & P. 238—Gurney.

In an indictment, the supposed perjury arose upon evidence given in reply to the testimony of one of who was acquitted and examined as a witness. The indictment did not state his acquittal, nor did the minute of the verdict shew it:—Held, that this was immaterial, parol evidence being given that he was in fact examined. Rex v. Browne, 3 C. & P. 572; M. & M. 315.

Declarations in articulo mortis are not admissible in evidence on the trial of an indictment for perjury. Rex v. Mead, 4 D. & R. 120; 2 B. & C. 605.

In a case of perjury, on a charge of bestiality, the defendant swore that he saw the prosecutor committing the offence, and saw the flap of his trowsers unbuttoned. disprove this, the prosecutor deposed that he did not commit the offence, and that his trousers had no flap; and, to confirm him, his brother proved, that, at the time in question, the prosecutor was not out of his presence for more than three minutes, and his trousers had no flap:—Held, to be sufficient corroborative evidence to go to the jury. Reg. v. Gardiner, 8 C. & P. 737-Patteson.

An assignment of perjury, that the prosecutor did not, at the time and place sworn to, or at any other time or place, commit bestiality with a donkey (as sworn to) or with any other animal whatsoever, is sufficiently proved by the evidence of two witnesses falsifying the deposition which had been sworn to by the defendant. 1b.

On the trial of an indictment for perjury on the crown side of the assizes, where it appeared that the attornies on both sides had agreed that the formal proofs should be dispensed with, and that part of the prosecutor's case should be admitted, the judge would not allow this admission. Reg. v. Thornhill, 8 C. & P. 575—Abinger.

A judge will not allow a criminal case upon the crown side of the assizes to be tried on admissions, unaffidavit, and, although the clergy-

less they are made at the trial by the defendant or his counsel. *Ib*.

On the trial of an indictment for perjury, committed on the hearing of an affiliation summons, under 7 & 8 Vict. c. 101, s. 2, it was proved that an information was duly made, which was put in evidence and read, and that the putative father appearat the petty sessions, and that upon the hearing of the information the perjury assigned was committed. The summons was not produced, nor service of it proved, but in all other respects the proceedings on the hearing of the information were proved and appeared to have been regular:—Held, that it was not necessary that the summons should have been produced to sustain a conviction for perjury on the above evidence. Reg. v. Smith, 17 L. T., N. S. 263; 1 L. R., C. C. 110; 37 L. J., M. C. 6; 16 W. R. 140; 11 Cox, C. C. 10.

On the trial of an indictment for perjury, it should be proved distinctly what the charge was on the hearing of which the false evidence was given. Reg. v. Carr, 10 Cox, C. C. 564; 16 W. R. 137; 17 L. T., N. S. 217—C. C. R.

B. was indicted for perjury committed in an affidavit, alleged to have been made by him in order to The evobtain a marriage licence. idence shewed that some person went to the vicar-general's office, and gave certain instructions, in accordance with which an affidavit was filled up by one of the clerks, which, after having been read over to the applicant, was signed by him. B.'s father proved that the signature to the affidavit was in his son's handwriting. The custom of the vicar-general's office was for the clerk who filled up the affidavit to go with the applicant, and get him to swear to it before a surrogate. Neither the clerk in the vicar-general's office, nor the surrogate, could identify B. as having sworn to the

man who married B. recognized him as being the person who was married under the licence granted on the strength of the affidavit signed by him, yet he did not receive it from him on the day of the marriage, but he received it on the previous day from the verger of his church:—Held, that further proof of the identity of the person who swore to the affidavit with the person who signed it was necessary before B. could be convicted of perjury assigned on a false statement contained in it. Reg. v. Barnes, 10 Cox, C. C. 539—Russell Gurney.

A solicitor was indicted for perjury in having sworn that there was no draft of a certain statutory declaration made by a client. No notice to produce the draft had been given to the solicitor, and upon his trial it was proved to have been last seen in his possession. Secondary evidence having been given of its contents:-Held, that, in the absence of such notice, secondary evidence was inadmissible. Reg. v. Elworthy, 1 L. R., C. C. 103; 37 L. J., M. C. 3; 17 L. T., N. S. 293; 16 W. R. 207; 10 Cox, C. C. 579.

## 9. Proof by Judge's Notes of Evidence.

In support of an indictment for perjury, committed on the trial of a plaint in a county court, it is not necessary to produce the judge's notes, if proof of the perjury can be established by witnesses who were present at the trial. Reg. v. Morgan, 6 Cox, C. C. 107—Martin.

The notes of evidence taken by a judge on a trial are not admissible in evidence to prove what was said on that trial. When, therefore, on a trial for perjury, alleged to have been committed by the defendant as a witness on a trial for felony before a Queen's counsel assisting the judges, and his notes of the evidence given on that occasion were tendered (on proof of his handwriting):—Held, that such notes were

not admissible. Reg. v. Child, 5 Cox, C. C. 197—Talfourd.

## 10. Proof of Particular Averments.

An allegation in an indictment for perjury, that the defendant made his warrant of attorney directed to R. W. and F. B., "then and still being attornies" of K. B., is proved by putting in the warrant of attorney. Rea v. Cooke, 7 C. & P. 559—Patteson.

If, in an indictment for perjury against C. D., it is averred that a cause was depending between A. B. and C. D., a notice of set-off intitled in a cause A. B. v. C. D., and signed by the attorney of C. D., is not sufficient evidence to support the allegation. Rex v. Stoveld, 6 C. & P. 489—Denman.

In an indictment for perjury committed on the trial of a former cause, the postea alone is sufficient evidence to prove that there was a trial, without shewing a copy of the final judgment. *Anon.*, Bull. N. P. 243.

An allegation in an indictment for perjury, that judgment was entered up in an action, is proved by the production of the book from the judgment office in which the incipitur is entered. Reg. v. Gordon, Car & M. 410—Denman.

An indictment, tried before the Lord Chief Justice at Westminster, charged the perjury to have been committed on a trial at nisi prins, although at the King's Bench sittings at Westminster. The prosecutor, to prove the trial at nisi prius, put in the nisi prius record with the minute of the verdict indorsed on it by the associate. There was no postea drawn up, and the associate stated that none would be drawn up, as a rule for a new trial was pending:-Held, to be sufficient proof of the trial at nisi prius. Rex v. Browne, 3 C. & P. 572; M. & M. 315.

A defendant was indicted for perjury alleged to have been committed by him on the hearing before justices of a summons charging him with being the father of an illegitimate child:—Held, that, to support the indictment, it was necessary to give evidence of the charge made by the mother, either by production of the original order made thereon, or by giving secondary evidence of the summons after notice to the defendant to produce it; and that, in the absence of such notice, it was not sufficient to produce the minutes of the proceedings by the clerk to the justices, those minutes being of no greater authority than the notes of a short-hand writer. Reg. v. Newall, 6 Cox, C. C. 21—Wightman.

On the trial of an indictment for perjury, alleged to have been committed before magistrates, on the hearing of a case punishable on summary conviction, the conviction by the magistrates is not receivable in evidence, because it is irrelevant. Reg. v. Goodfellow, Car. & M. 569

-Patteson.

In an indictment for perjury before justices of the peace, there must be formal proof of the commencement of the proceedings by production of the summons, information or the like. Reg. v. Hurrell, 3 F. & F. 271—Martin.

A. was indicted for wilful and corrupt perjury committed at the Westminster police court. A summons was granted upon an information, and upon the hearing of the summons the perjury assigned was At the trial the incommitted. formation was produced, but not the summons:—Held, not sufficient; the summons should have been pro-Reg. v. Whybrow, 8 Cox, C. duced. C. 438—Russell Gurney, Recorder.

An office copy of a bill in Chancery, which a witness examined with the original but which office copy contained abbreviations, such as "pnl. este." for the words "personal estate" in the original bill, is not such an examined copy as will be evidence to support an allegation lesq., sheriff of D., by virtue of a

of a bill in Chancery on an indictment for perjury, committed in an affidavit in that suit in Chancery. Reg. v. Christian, Car. & M. 388— Denman.

On an indictment for perjury, setting forth, with proper innuendoes, a copy of a deposition before a magistrate, written in the English language, and signed by the defendant, he may be convicted on proof of a verbal deposition in the Welsh language, of which the written deposition, signed by him, is the substance. Reg. v. Thomas, 2 C. & K. 806—Williams.

In an indictment for perjury, it was alleged that A. made his will, and thereby appointed B. his executor: the production of the probate is the proper proof of this allegation; but if it had been necessary to prove that A, had devised real estates, the original will must have been produced, and one of the attesting witnesses called. Req. v. Turner, 2 C. & K. 732—Erle.

In an indictment for perjury, it was averred that a suit was instituted in the Prerogative Court by C. against B., to dispute the validity of a codicil to a will:—Held, that the production of the original allegations of both parties in the suit, signed by their advocates, and proof of their advocates' signatures, and that they acted as advocates in that court, such allegations being produced from the registrar of the court, was sufficient proof of the averment, and that the caveat need not be produced. Ib.

In an indictment for perjury, on the trial of a cause under a writ of trial directed to the sheriffs of London, the oath is properly alleged to have been taken before the sheriffs, though, in fact, the cause was tried before the secondary. Reg. v. Schlesinger, 10 Q. B. 670; 12 Jur. 283; 17

L. J., M. C. 29. An indictment for perjury alleged the trial of an issue before E. S.,

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writ directed to the sheriff; the writ of trial put in evidence was directed to the sheriff, and the return was of a trial before him; but it was proved, that, in fact, the trial took place before a deputy, not the under-sheriff:—Held, no variance. Reg. v. Dunn, 2 M. C. C. 297; 1 C. & K. 730.

## 11. Proof of Indictment.

By 14 & 15 Vict. c. 100, s. 22, "a " certificate containing the substance "and effect only (omitting the form-"al part) of the indictment and tri-"al for any felony or misdemeanor, "purporting to be signed by the "clerk of the court or other officer "having the custody of the records " of the court where such indictment "was tried, or by the deputy of such "clerk or other officer (for which "certificate a fee of 6s. 8d. and no "more shall be demanded or taken), "shall upon the trial of any indict-"ment for perjury, or subornation "of perjury, be sufficient evidence " of the trial of such indictment for "felony or misdemeanor, without "proof of the signature or official "character of the person appearing "to have signed the same."

On an indictment for perjury committed on the hearing of a parish appeal at the quarter sessions, the production of the sessions book is not sufficient proof that the appeal came on to be heard; and a regular record ought to be made upon parchment, the same as on a return to a certiorari, and that record, or an examined copy, must be produced. Rex v. Ward, 6 C. &. P. 366—Park.

An allegation, that "on &c., at &c., a certain indictment was preferred at the quarter sessions of the peace then and there holden in and for the county of W., against the defendant and one T. E., which indictment was then and there found a true bill," is not supported by the production of the original indict.

ment with the words "true bill" indorsed on it, it being necessary that a regular record should be drawn up and proved, either by its production or by an examined copy of it. *Porter* v. *Cooper*, 6 C. & P. 354—Patteson.

On the trial of an indictment for perjury at the Central Criminal Court, to prove the fact of a former trial in the same court:—Held, that the production, by the officers of the court, of the caption, the indictment, with the indorsement of the prisoner's plea, the verdict, and the sentence of the court upon it, together with the minutes of the trial made by the officer in court, was sufficient evidence of it; and that the production of neither the record nor a certificate, under 14 & 15 Vict. c. 99, s. 13, and 14 & 15 Vict. c. 100, s. 22, was necessary. Reg. v. Newman, 3 C. & K. 240; 2 Den. C. C. 390; 16 Jur. 111; 21 L. J., M. C. 75; 5 Cox, C. C. 547.

## 12. Witnesses and Corroborative Evidence.

The evidence of one witness is not sufficient to convict of perjury, as there would be only one oath against another. Rex v. Lee, 3 Russ. C. & M. 78; S. P., Champney's case, 2 Lewin, C. C. 258.

But two witnesses are not essentially necessary to disprove the fact sworn to; for, if any material circumstance is proved by other witnesses in confirmation of the witness who gives the direct testimony of perjury, it may turn the scale and warrant a conviction. *Ib*.

And the rule does not apply where the evidence consists of the contradictory oath of the party accused. Rex v. Knill, 5 B. & A. 929, n.

To prove perjury, it is sufficient if the matter alleged to be falsely sworn is disproved by one witness, if, in addition to the evidence of that witness, there is proof of an account, or a letter written by the defendant contradicting his state-Rex v. Mayhew, 6 ment on oath. C. & P. 315—Denman.

On an indictment for perjury, alleged to have been committed at the quarter sessions, the chairman at the quarter sessions ought not to be called upon to give evidence as to what the defendant swore at the quarter sessions. Req. v. Gazard, 8

C. & P. 595—Patteson.

A., in an affidavit stated that he had paid all the debts proved under his bankruptcy, except two, as to which he explained; in support of an indictment for perjury upon that affidavit several creditors were called, who each proved the non-payment of his own debt:—Held, that this was not sufficient to warrant a conviction, and that as to the nonpayment of each debt, it was necessary to have the evidence of two witnesses, or of one witness, and such corroborative testimony as is equal to the testimony of a second witness. Reg. v. Parker, Car. & M. 639 -Tindal.

The rule, that the testimony of a single witness is not sufficient to sustain an indictment for perjury, is not a mere technical rule, but a rule founded on substantial justice; and evidence, confirmatory of that one witness in some slight particulars only, is not sufficient to warrant a conviction. Reg. v. Yates, Car. & M. 132; 5 Jur. 636—Coleridge.

Although an assignment of perjury must be proved by two witnesses, it is not necessary to prove by two witnesses every fact which goes to make out the assignment of perjury. Reg. v. Roberts, 2 C. & K.

607—Patteson.

A., to prove an alibi for B., had sworn that B. was not out of his sight between the hours of 8 a.m. and 9 a.m. on a certain day, and on this perjury was assigned. Proof by one witness, that between those hours A. was at one place on foot, and by another witness, that between those hours B. was walking | sons not being sworn to secrecy, al-

at another place six miles off:— Held, to be sufficient proof of the assignment of perjury. Ib.

Where perjury was assigned upon a statement made by the prisoner on oath, upon a trial at Nisi Prius. that in June, 1851, he owed no more than one quarter's reut to his landlord, and the prosecutor swore that the prisoner owed five quarters' rent at that date; and to corroborate the prosecutor's evidence, a witness was called, who proved that in August, 1850, the prisoner had admitted to him that he then owed his landlord three or four quarters' rent: —Held, first, that this was not such corroboration as is necessary to sustain an indictment for perjury. Reg. v. Boulter, 3 C. & K. 236; 2 Den. C. C. 396; 16 Jur. 135; 21 L. J., M. C. 57; 5 Cox, C. C. 543.

Held, secondly, that two nesses are not essentially necessary to contradict the oath on which the perjury is assigned, but that there must be something more than the oath of one, to shew that one party is more to be believed than the oth-

Ib.

To support an indictment for perjury there must be something proved in the case for the prosecution, making the oath of the prosecutor preferable to that of the defendant; there need not be two distinct oaths, as one oath and circumstances may be sufficient. Ib.

A person may be indicted for perjury who gives false evidence before a grand jury when examined as a witness before them upon a bill of indictment; and another witness on the same indictment, who is in the grand jury-room while such person is under examination, is competent to prove that such witness swore before the grand jury, and so is a police officer, who was stationed within the grand jury-room door, to receive the different bills at the door, and take them to the foreman of the grand jury; these per-

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though the grand jury is so. Reg. | v. Hughes, 1 C. & K. 519-Tindal.

The prisoner was charged with perjury, for having falsely sworn before magistrates at petty sessions, that D. R. was the father of her illegitimate child. At the trial of the prisoner the imputed father, D. R., swore that he never had intercourse with her. In corroboration of D. R., a witness was called who swore that the prisoner had told witness, at a time when she generally denied being with child, that "D. R. had never touched her clothes":-Held, that, as the negation was made by the prisoner at a time when she generally denied being with child, it was so far a part of such general denial that, although it could not be altogether withdrawn from the jury, it was not a corroboration of D. R.'s testimony, on which alone they could convict her. Another assignment of perjury was, that on the same occasion the prisoner had falsely sworn that her master, who was uncle of D. R., had promised her that he would raise her wages, and allow her to lie in at his house, if she would swear the child to a person other than his nephew, D. R.: —Held, that such statement was not material to the issue so as to constitute the crime of perjury. Reg. v. Owen, 6 Cox, C. C. 105— Martin.

Although it is not necessary that the alleged perjury should be proved by two witnesses in contradiction of the prisoner, it is requisite that the perjury should be proved by something more than the mere contradictory oath of the prosecu-He must be corroborated by some independent testimony. Reg. v. Braithwaite, 8 Cox, C. C. 254; 1 F. & F. 638—Watson.

A party was charged with having falsely sworn that certain invoices bearing certain dates were produced by her to C. The only

that she had not produced those invoices, but that she had produced others of the dates of which he made a memorandum at the time: —Held, that the memorandum was a sufficient corroboration upon which to convict. Reg. v. Webster, 1 F. & F. 515—Cockburn.

The prisoner was convicted of perjury. He was a policeman, having laid an information against a publican for keeping open his house after lawful hours, and swore, on the hearing, that he knew nothing of the matter except what he had been told, and that "he did not see any person leave the defendant's house after eleven" on the night in question. The perjury was assigned on this last allegation, and the evidence to prove its falsehood was, that the prisoner when laying the information, said that "he had seen four men leave the house after eleven," and that he could swear to one as W. On two other occasions the prisoner made a similar statement to two other witnesses; and W. and others did, in fact, leave the house after eleven o'clock on the night in question; that on the hearing the prisoner acknowledged that he had offered to smash the case for 30s.; that he had talked, in the presence of another witness, of making the publican give him money to settle it; and he had, in fact, offered to the publican to settle it for 11., and had said that he had received 10s. to smash the case, and was to have 10s. more:—Held, that the evidence was sufficient to prove the perjury assigned, and that the conviction was right. Reg. v. Hook, Dears. & B. C. C. 606; 4 Jur., N. S. 1026; 27 L. J., M. C. 222; 8 Cox, C. C. 5.

### 13. Trial.

It is the practice of the Central Criminal Court not to try an indictment for perjury arising out of a civil suit, while that suit is in any witness called was C., who swore way undetermined, except in cases where the court in which it is pending postpones the decision of it in order that the criminal charge may be first disposed of. Rex v. Ashburn, 8 C. & P. 50—Parke. See Peddell v. Rutter, 8 C. & P. 340.

### 14. False Declarations.

## (a) Customs.

Making false declarations in matters relating to the customs, see 16 & 17 Vict. c. 107, s. 198, and 18 & 19 Vict. c. 96, s. 38.

(b) On Registration of Voters and at Parliamentary Elections.

By 28 & 29 Vict. c. 36, s. 10, "persons changing their abodes be"fore the last day of July in any
"year, and objected to, may make
"declarations as to the true place
"of their abodes and qualification,
"for the purpose of being registered
"as voters, and, by s. 11, persons
"falsely signing such declarations,
"will be guilty of a misdemeanor,
"punishable by fine or imprison"ment for a term not exceeding one
"year."

An indictment for wilfully making a false answer to the third question put to a party tendering his vote at an election of members of parliament, in pursuance of 2 & 3 Will. 4, c. 45, s. 58, had been removed by certiorari. At the trial, several objections were taken, grounded on the omission of proper allegations in the indictment:—Held, that, being on the record, they should be left to the decision of the court. Reg. v. Bowler, Car. & M. 559; 6 Jur. 287—Patteson.

Where an averment states the words of the affirmative answer, they must be proved as alleged. *Ib.* 

On an indictment under 2 & 3 Will. 4, c. 45, s. 58, for giving a false answer at the poll at an election of members of parliament for a borough, it is not essential that the returning officer should himself put

the three questions to the voters under sect. 53, it is sufficient if the town clerk does it in his presence, and by his direction; neither is it necessary to shew that the agent who required the questions to be put was expressly appointed by the candidate; it is sufficient to shew that he has acted as agent for the candidate. Reg. v. Spalding, Car. & M. 568—Patteson.

The word wilfully, in an indictment on the 2 & 3 Will. 4, c. 45, s. 58, for giving a false answer at the poll, should be construed in the same way as in an indictment for perjury, and be supported by the same sort of evidence. Reg. v. Ellis, Car. & M. 564; 6 Jur. 287—Patteson.

A voter having changed his residence since the last registration, cannot be indicted under 2 & 3 Will. 4, c. 45, for swearing that he has still the same qualification, if the sheriff's deputy should omit, at the time the voter tenders his vote to read over to him the specific qualification from the register. Reg. v. Lucy, Car. & M. 511—Wightman.

On an indictment against a voter for making a false declaration as to his possession of the same qualification, under 2 & 3 Will. 4, c. 45, s. 58, a copy of the original register, made according to s. 55, may be received in evidence; and it is sufficient if it resembles the original in respect of the voter's name and description. Reg. v. Dodsworth, 8 C. & P. 218; 2 Jur. 131—Denman.

The words, "the same qualification," mean that the voter must, at the time of the election, be in possession of the identical qualification in respect of which he was registered. It is not enough if he possesses premises of a similar description.

If a person knew that at the time of polling he gave a false answer as to his having the same qualification as at the time of registration, it

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would be no defence to an indictment for that offence that he acted under the advice of an electioneering committee; but if, possessing property of equal value with that for which he was registered, he acted bonâ fide, and under an impression that he was entitled to vote, he ought to be acquitted. Ib.

Upon an indictment, in falsely taking the free-holder's oath at an election of a knight of the shire in the name of J. W.; it appearing by competent evidence that the freebolder's oath was administered to a person who polled on the second day of the election by the name of J. W., who swore to his freehold and place of abode, and that there was no such person; and that the defendant voted on the second day, and was no freeholder, and sometime after boasted that he had done the trick, and was not paid enough for the job, and was afraid he should be pulled up for his bad vote; and it not appearing that more than one false vote was given on the second day's poll, or that the defendant voted in his own name, or in any other than the name of J. W.: —Held, that there was sufficient evidence for the jury to presume that the defendant voted in the name of J. W., and consequently to find him guilty of the charge as alleged in the indictment. Rex v. Price, 6 East, 323; 2 Smith, 525. And see Rex v. Leefe, 2 Camp. 139; and Purcell v. M'Namara, 9 East, 157.

## (c) Corporate.

By 5 & 6 Will. 4, c. 76, s. 34, "if any person shall wilfully make "a false answer to any of the ques-"tions required by this section he "shall be guilty of a misdemeanor, "and may be indicted and punished " accordingly."

An indictment upon the above section for giving a false answer on voting for a town councillor, is bad, if it does not allege that the defendant wilfully gave the false answer. ejusdem generis.

Reg. v. Bent, 2 C. & K. 179; 1 Den. C. C. 157.

Where a count alleged that the prisoner falsely, fraudulently and deceitfully personated a burgess at an election of councillors for a borough:—Held, no offence under this section or at common law. Ib.

The son of a burgess, of the same name as his father, living in the house in respect of which the father had been qualified, but the father having for some time been absent, and the son paying the rates, is not indictable for untruly answering the questions put to voters upon his voting. Reg. v. Goodman, 1 F. & F. 502—Wightman.

## (d) Before Magistrates.

Au indictment on 5 & 6 Will. 4, c. 62, s. 13, for making a false declaration before a magistrate, stated, that, by the rules of a benefit society, any full free member of it who sustained a loss by an accidental fire was to be indemnified to the extent of 15l., on making a declaration before a magistrate verifying his loss: and that the defendant was a full free member of the society, and had made a false declaration before a magistrate, that he had sustained a loss by fire. On the trial, the rules of the society could not be proved; but held, that the allegations in the indictment respecting the rules might be rejected as surplusage, as the offence of the defendant, in making the false declaration as to the fire, would be an offence within the statute, if no such benefit society had ever existed. Reg. v. Boynes, 1 C. & K. 65—Erskine.

The 5 & 6 Will. 4, c. 62, s. 18, which enables magistrates to receive voluntary declarations instead of oaths, extends to declarations generally, and is not confined to declarations with respect to the confirmation of written instruments or allegations, or proofs of debts, or of the execution of deeds, or other matters

Where a person is indicted for having made a false declaration as to a fire having taken place at his house, evidence may be given, that, with the declaration, he sent a certificate, which stated the fire to have occurred, and that the signatures to that certificate were all forgeries, as this evidence may go to shew that the declaration was wilfully false.

An indictment for perjury in making a false declaration under 5 & 6 Will. 4, c. 62, s. 18, cannot be sustained when the deed or written instrument of which the declaration is confirmatory is not duly proved. Reg. v. Cox, 4 F. & F. 42—Byles.

An indictment under 5 & 6 Will. 4, c. 62, s. 13, for administering an extra-judicial oath, is bad, if it does not so far set out the deposition, that the court may judge whether or not it is of the nature contemplated by the statute. Reg. v. Nott, 4 Q. B. 768; 9 Cox, C. C. 301; D. & M. 1; 7 Jur. 621; 12 L. J., M. C. 143.

To prove the making of a false declaration under the Pawnbroker's Act (39 & 40 Geo. 3, c. 99), it is not absolutely necessary to call the magistrate before whom it was made or some one present at the time. Reg. v. Browning, 3 Cox, C. C. 437.

To prove that such a declaration is false in fact, it is necessary to negative the defendant's statement by the oath of two witnesses in the same manner, and to the same extent as on the proof of an assignment for perjury. *Ib*.

A county magistrate complained to the bishop of the diocese of the conduct of two of his clergy; and to substantiate his charge he swore witnesses before himself; as magistrate, to the the truth of the facts:

—Held, that the matter before the bishop was not a judicial proceeding, and therefore that the magistrate had brought himself within the 5 & 6 Will. 4, c. 62, s. 13; and

that he had unlawfully administered voluntary oaths, contrary to the enactment of the statute. Reg. v. Nott, Car. & M. 288; D. & M. 1; 4 Q. B. 768; 12 L. J., M. C. 143.

## (e) On Registration of Births, Deaths or Marriages.

indictment, under 6 & 7 Will. 4, c. 86, s. 41, charged, that a clergyman solemnized a marriage and was about to register in duplicate the particulars relating to the marriage, and that the prisoner did wilfully make to the clergyman, for the purpose of being inserted in the register of marriage, certain false statements. The proof was, that the particulars were entered by the clerk of the church before the marriage; that, after the marriage, the clergyman asked the prisoner if they were correct, and that he answered in the affirmative, and the clergyman signed the register:-Held, that the prisoner was rightly con-Reg. v. Brown, 2 C. & K. 504; 1 Den. C. C. 291; 3 Cox, C. C. 127; 17 L. J., M. C. 145.

Held, also, that it was not necessary, upon the indictment, to prove that the register books used by the clergyman were furnished to him by the registrar-general. Ib.

the registrar-general. Ib.

The 6 & 7 Will. 4, c. 86, s. 41, makes it a misdemeanor to make a false statement of one or more of the particulars required to be registered for the purpose of being inserted in any register of births, deaths or marriages; and to constitute this offence, the purpose need not be effected. Reg. v. Muson, 2 C. & K. 622—Cresswell.

But it is a felony, under sect. 43, to cause the registrar to make an entire false entry of a birth, marriage or death. *Ib*.

A woman went to a registrar, and asked him to register the birth of a child; she stated to him the particulars necessary for the entry, and he made the entry accordingly, and she signed it as the person giv-

ing the information. Every particular which she stated was false:—Held, that this amounted to the felony of causing a false entry to be made within 6 & 7 Will. 4, c. 86, s. 43, and was not merely the misdemeanor of making a false statement under s. 41. Reg. v. Dewitt, 2 C. & K. 905; 4 Cox, C. C. 49—Cresswell.

To support an indictment on 6 & 7 Will. 4, c. 86, s. 41, for making a false statement touching the particulars required to be registered for the purpose of their being inserted in a register of marriages, it is essential that the false statement should have been made wilfully and intentionally, and not by mistake only. Reg. v. Dunboyne (Lord), 3 C. & K. 1—Campbell.

A man may change his surname by use and reputation, and if by use and reputation he has acquired a new name, he is not indictable under 19 & 20 Vict. c. 19, s. 2, for using a new name in signing a notice for the purpose of procuring his marriage under 6 & 7 Will. 4, c. 85. Reg. v. Smith, 4 F. & F. 1099—Willes.

# 15. Seditious Practices and Unlawful Oaths.

Statutes.]—37 Geo. 3, c. 123; 39 Geo. 3, c. 79; 2 & 3 Vict. c. 12; 52 Geo. 3, c. 104; 57 Geo. 3, c. 19, s. 25.

The provisions of 37 Geo. 3, c. 123, which make it a felony to administer an unlawful oath, are not confined to oaths administered with either a mutinous or a seditious object. Rex v. Brodribb, 6 C. & P. 571—Holroyd.

A party of sixteen persons was going out armed for the purpose of night poaching. Before they went out the prisoner swore them all to secrecy:—Held, a felony within that statute. *Ib*.

Where sixteen persons took the same unlawful oaths, two or three at a time, all being present:—Held, gation of an oath. *Ib*.

that the person who administered the oath might be convicted on an indictment for administering a certain oath to A., B., C., D., &c. (naming the whole sixteen persons.)

If the indictment states the oaths to have been, not to inform or give evidence against any person belonging to a confederacy of persons associated together to do a certain illegal act, this is sufficient, without stating what the illegal act was. Ib.

If the oath administered was intended to make the parties to whom it was administered believe themselves under an engagement, it is equally within the statute whether the book on which they were sworn was a Testament or not. Ib.

Where an oath was administered, that the party taking it should not make buttons under certain stated prices, and should keep all the secrets of the lodge:—Held, to be an administering of an unlawful oath within the statutes. Rex v. Ball, 6 C. & P. 563—Williams.

The administering an oath or any agreement to any person not to reveal the secrets of any association, is an offence within those statutes. *Ib*.

An association, the members of which are bound by oath not to disclose its secrets, is an unlawful combination and confederacy (unless expressly declared by some act of parliament to be legal), for whatever purpose or object it may be formed; and the administering of an oath not to reveal anything done in such association is an offence within 37 Geo. 3, c. 123, s. 1. Rex v. Lovelass, 6 C. & P. 596; 1 M. & Rob. 349—Williams.

The precise form in which the oath is administered is not material; it is an oath within the meaning of the act, if it was understood by the party tendering, and the party taking it, as having the force and obligation of an oath. *Ib*.

Every person who engages in an association, the members of which, in consequence of being so, take an oath not required by law, is guilty of an offence within 57 Geo. 3, c. 19, s. 25. Rex v. Dixon, 6 C.

& P. 601—Bosanquet.

The unlawful administering, by any associated body of men, of an oath to any person, purporting to bind him not to reveal or discover such unlawful combination or conspiracy, nor any illegal act done by them, is felony within the 37 Geo. 3, c. 123, though the object of such association was a conspiracy to raise wages and make regulations in a certain trade, and not to stir up mutiny or sedition. Rex v. Marks, 3 East, 157.

Indictment. By 37 Geo. 3, c. 123, s. 4, it shall not be necessary, in an indictment for any offence under this statute, to set forth the words of the oath, but it shall be sufficient to set forth the purport of it, or some material part thereof, an indictment charging that the defendants administered to J. H. an oath, intended to bind him not to inform or give evidence against any member of a certain society formed to disturb the public peace, for any act or expression of his or theirs, is good, without alleging the tenor or purport of the oath to be set forth, and without shewing in what manner the public peace was meant to be disturbed by such society. Rex v. Moore, 6 East, 419.

Evidence.]—Where the witness, swearing to the words spoken by way of oath by the prisoner when he administered the same, said that he held a paper in his hand at the same time when he administered the oath, from which it was supposed that he read the words; yet held, that parol evidence of what he in fact said, was sufficient without giving him notice to produce such paper. Ib.

### XXVII. PERSONATION.

1. Stockholders, 423.

2. Seamen and Soldiers, 423.

3. Voters, 424.

### 1. Stockholders.

By 24 & 25 Vict. c. 98, s. 3, "whosoever shall falsely and de-"ceitfully personate any owner of "any share or interest of or in any "stock, annuity, or other public "fund which now is or hereafter "may be transferable at the Bank " of England or at the Bank of Ire-"land, or any owner of any share "or interest of or in the capital "stock of any body corporate, com-"pany or society which now is or "hereafter may be established by "charter, or by, under or by virtue " of any act of parliament, or any "owner of any dividend or money "payable in respect of any such "share or interest as aforesaid, and "shall thereby transfer or endeav-"our to transfer any share or in-"terest belonging to any such "owner, or thereby receive or en-"deavour to receive any money "due to any such owner, as if such "offender were the true and lawful "owner, shall be guilty of felony." (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 6.)

Obtaining and indorsing a dividend warrant at the bank in the name of a stockholder is "personating a proprietor, and thereby endeavouring to receive the dividend," although no attempt whatever is made to receive the money at the pay-office. Rex v. Parr, 1 Leach, C. C. 434; 2 East, P. C.

1005.

### 2. Seamen and Soldiers.

11 Geo. 4 & 1 Will. 4, c. 20, s. 84; 2 & 3 Will. 4, c. 53, s. 49; 28 & 29 Vict. c. 124, s. 8.

Under 31 Geo. 2, c. 10, the personating must be of some existing person entitled, or who prima facie might be entitled, to receive the

wages. Rew v. Brown, 2 East, P. | C. 1007.

Where a prisoner personated one S. Cuff, who was dead, and whose prize-money had been paid to his mother: — Held, that it did not vary the prisoner's guilt; and that he might be convicted on 54 Geo. 3, c. 93, s. 89. Rex v. Cramp, R. & R. C. C. 327; S. P., Reg. v. Pringle, 9 C. & P. 408; 2 M. C. C. 127.

The prisoner applied at Greenwich Hospital for prize-money in the name of J. B.; J. B. was dead, and was supposed to be so at the hospital, and the prisoner did not obtain the money. On an indictment for personating:—Held, that the 54 Geo. 3, c. 93, s. 89, applied, although the seaman was dead. Rex v. Martin, R. & R. C. C. 324.

To constitute the offence of personating the name of a seaman under 57 Geo. 3, c. 127, s. 4, the person entitled, or really supposed to be entitled to prize-money, must be personated; personating a man who never had any connection with the ship is not an offence within the act. Rex v. Tannet, R. & R. C. C. 351.

All persons aiding and abetting the personating a seaman entitled to allowance money are principals, and the offence is not confined to the person only who personates the seaman. Rex v. Potts, R. & R. C. C. 353.

#### 3. Voters.

Parliamentary.]—(6 & 7 Viet. c. 18, s. 83.)

On an indictment for fraudulently personating a voter at an election of a member of parliament for a city being a county of itself, the writ to the sheriff must be produced in order to prove that the election was duly made. Reg. v. Vaile, 6 Cox, C. C. 470—Crompton.

Municipal.]-The offence of in-

ducing another to personate a voter at a municipal election under 22 & 23 Vict. c. 35, s. 9, is complete upon the personator tendering the voting paper, although, on being asked if he is the person whose name is signed to the voting paper, he answers "No," and the vote is accordingly rejected. Reg. v. Hague, 9 Cox, C. C. 412; 4 B. & S. 715; 33 L. J., M. C. 81.

Municipal Voters.]—By 14 & 15 Vict. c. 105, s. 3, if any person, pending, or after the election of any guardian, shall wilfully, fraudulently, and with intent to affect the result of such election, personate any person entitled to vote at such election, he shall be liable on conviction by two justices to three months' imprisonment:—Held, that the section makes no provision against the offence of personating a voter who is dead at the time of the election, as the offender cannot in such case be convicted of personating any one "entitled to vote" at the election. Whiteley v. Chappell, 38 L. J., M. C. 51; 17 W. R. 172; 4 L. R., Q. B. 147; 19 L. T., N. S. 355.

### XXVIII. Poisoning.

- Placing Poison in Plantations, 424.
   Murder by—See Murder.
- 3. Administering with Intent to Murder—See Murder.
- 4. To procure Abortion—See Mur-
- 1. Placing Poison in Plantations.

27 & 28 Vict. c. 115, amends the 26 & 27 Vict. c. 113, "and prohibits "the placing of poisoned fiesh and "poisonous matters in plantations, "fields and open places."

- 2. Murder by, see page 330.
- 3. Administering Poison with Intent to Murder, see page 350.
- 4. To procure Abortion, see page 352.

## XXIX. PRIZE-FIGHTS.

Persons who are present at a prize-fight and who have gone thither with the purpose of seeing the persons strike each other, are all principals in the breach of the peace, and indictable for an assault, as well as the actual combatants, and it is not at all material which of the combatants struck the first blow. Rex v. Perkins, 4 C. & P. 537—Patteson.

Where a prize-fight is expected, the magistrates ought to cause the intended combatants to be brought before them, and compel them to enter into securities to keep the peace till the assizes or sessions; and if they refuse to enter into such securities, to commit them. Rex v. Billingham, 2 C. & P. 234

—Burrough.

All prize-fights are illegal, and all persons engaged in them are punishable by law. Reg. v. Brown, Car. & M. 314—Alderson.

The spectators of a sparring match are not participes criminis, so that their evidence, touching what occurred at the match, requires corroboration. Reg. v. Young, 10 Cox,

C. C. 371—Bramwell.

There is nothing unlawful in sparring, unless, perhaps, the men fight on until they are so weak that a dangerous fall is like to be the result of the continuance of the Therefore, except in the latter case, death caused by an injury received during a sparring match does not amount to manslaughter. Ib.

## XXX. RAILWAYS AND TELE-GRAPHS.

 Endangering Safety of Persons on Railways, 425.

2. Obstructing Engines or Carriages on, 427.

3. Injuring Telegraphs, 427.

1. Endangering Safety of Persons on Railways.

By 24 & 25 Viet. c. 100, s. 32, "whosoever shall unlawfully and " maliciously put or throw upon or "across any railway any wood, "stone or other matter or thing, or "shall unlawfully and maliciously "take up, remove or displace any "rail, sleeper or other matter or "thing belonging to any railway, "or shall unlawfully and mali-"ciously turn, move or divert any " points or other machinery belong-"ing to any railway, or shall un-"lawfully and maliciously make or "shew, hide or remove any signal " or light upon or near to any rail-" way, or shall unlawfully and ma-"liciously do or cause to be done "any other matter or thing, with "intent, in any of the cases afore-"said, to endanger the safety of "any person travelling or being "upon such railway, shall be guilty "of felony, and being convicted "thereof shall be liable, at the dis-"cretion of the court, to be kept "in penal servitude for life, or for "any term not less than five years "(27 & 28 Vict. c. 47), or to be "imprisoned for any term not ex-"ceeding two years, with or with-"out hard labour, and, if a male "under the age of sixteen years, "with or without whipping." (Former provision, 14 & 15 Vict. c. 19,

By s. 33, "whosoever shall un-"lawfully and maliciously throw or " cause to fall or strike at, against, "into or upon any engine, tender, "carriage or truck used upon any "railway, any wood, stone or other "matter or thing, with intent to "injure or endanger the safety of "any person being in or upon such " engine, tender, carriage or truck, "or in or upon any other engine, "tender, carriage or truck of any "train of which such first-men-"tioned engine, tender, carriage or "truck shall form part, shall be "guilty of felony, and being con-

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"victed thereof shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not "exceeding two years, with or with-"out hard labour." (Former provision, 14 & 15 Vict. c. 19, s. 7.)

By s. 34, "whosoever, by any "unlawful act, or by any wilful "omission or neglect, shall endan-"ger or cause to be endangered the "safety of any person conveyed or "being in or upon a railway, or "shall aid or assist therein, shall " be guilty of a misdemeanor, and "being convicted thereof shall be "liable, at the discretion of the "court, to be imprisoned for any "term not exceeding two years, "with or without hard labour." (Former provision, 3 & 4 Vict. c. 97, s. 15.)

A party was liable to be indicted under 3 & 4 Vict. c. 97, s. 15, if he designedly placed on a railway substances having a tendency to produce obstruction to the carriages, though he might not have done the act expressly with that object. Reg. v. Holroyd, 2 M. & Rob. 339—Maule.

On an indictment under 3 & 4 Vict. c. 97, s. 15, for unlawfully and wilfully doing anything to endanger the safety of persons conveyed in or upon any railway, it was unnecessary to allege or prove that the railway was constructed or worked under the powers of an act of parliament. Reg. v. Bowray, 10 Jur. 211—Alderson.

A person throwing a stone at engines or carriages using a railway, might be indicted under 3 & 4 Vict. c. 97, s. 15, for doing an act to endanger the safety of persons conveyed on the railway; and the indictment might contain a count at common law for throwing the stone at the carriages. Ib.

The neglect of the driver and

a good look out for signals, according to the rules and regulations of the railway company, the consequence of which neglect is, that a collision occurs, and the safety of passengers is endangered, was not an offence within 3 & 4 Vict. c. 97, s. 15. Reg. v. Pardenton, 6 Cox, C. C. 247—Cresswell and Williams.

To constitute a felony under 14 & 15 Vict. c. 19, s. 7, it was necessary that the stone or other thing used should be thrown against and strike an engine, tender, carriage or truck, having a person or persons in or upon it; and, therefore, although a stone may be thrown at a train with intent to injure persons being therein, yet, if it strikes a carriage or tender not having any person in or upon it at the time, the felony is not proved. Reg. v. Court, 6 Cox, C. C. 202—Cromp-

On an indictment under 14 & 15 Vict. c. 19, s. 7, for maliciously throwing stones into a railway carriage, with intent to endanger the safety of any person in it, there must be evidence of an intent to do some grievous bodily harm, such as would support an indictment for wounding a particular person with that intent; and, if it appears that the prisoner's intention was only to commit a common assault on some person in the carriage, be must be acquitted. Reg. v. Rooke, 1 F. & F. 107—Erle.

On an indictment for wilfully and maliciously casting anything upon a railway carriage or truck, either with intent to injure it or to endanger the safety of persons in the train; there may be a case for the jury, although the train is a goods train, and there was no person on the particular truck, but there must be proof of the intent to endanger the safety of persons in it. Reg. v. Sanderson, 1 F. & F. 37—Channell.

B. placed a truck across a railway line in such a manner that if a carstoker of a railway engine to keep | riage or an engine had come along the line it would have been obstructed, and the safety of passengers, who might have been in any such carriage, would have been endangered. The railway had not opened for passenger traffic, and no carriage or engine was in fact obstructed:—Held, that he was guilty of a misdemeanor, under 3 & 4 Vict. c. 97, s. 15. Reg. v. Bradford, 8 Cox, C. C. 309; 6 Jur., N. S. 1102; 2 L. T., N. S. 392; Bell, C. C. 268; 29 L. J., M. C. 171; 8 W. R. 531.

# 2. Obstructing Engines or Carriages on.

By 24 & 25 Viet. c. 97, s. 35, "whosoever shall unlawfully and "maliciously put, place, cast or "throw upon or across any railway "any wood, stone, or other matter " or thing, or shall unlawfully and "maliciously take up, remove or "displace any rail, sleeper, or other "matter or thing belonging to any "railway, or shall unlawfully and "maliciously turn, move or divert "any points or other machinery be-"longing to any railway, or shall "unlawfully and maliciously make "or shew, hide or remove, any sig-"nal or light upon or near to any "railway, or shall unlawfully and " maliciously do or cause to be done "any other matter or thing, with "intent, in any of the cases afore-"said, to obstruct, upset, over-"throw, injure or destroy any engine, "tender, carriage or truck using such "railway, shall be guilty of felony, "and, being convicted thereof, shall "be liable, at the discretion of the "court, to be kept in penal servi-"tude for life, or for any term not "less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour, and, if a male under the age "of sixteen years, with or without whipping." (Former provisions, 3 & 4 Viet. c. 97, s. 15, and 14 & 15 Viet. c. 19, s. 6.)

By s. 36, "whosoever, by any "unlawful act, or by any wilful "omission or neglect, shall obstruct or cause to be obstructed any engine or carriage using any rail-way, or shall aid or assist therein, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with "or without hard labour." (Former provision, 3 & 4 Vict. c. 97, s. 15.)

The prisoners placed a stone upon a line of railway, so as to cause an obstruction to any carriages that might be traveling thereon:—Held, that if this was done mischievously, and with an intention to obstruct the carriages of the company, the jury would be justified in finding that it was done maliciously. Reg. v. Upton, 5 Cox, C. C. 298—Wightman.

Upon an information before justices on behalf of a railway company, for an offence against its act of incorporation, in placing stones and rubbish on the railway, and thereby obstructing the free passage of the same, evidence that the act was done by certain persons employed by the defendant to repair a wall between the railway and his premises adjoining; and that on one occasion the defendant himself, who was standing by, nodded his head, and directed the workman to go on, is sufficient to warrant the justices in convicting the defendant. Roberts v. Preston, 9 C. B., N. S. 208.

# 3. Injuring Telegraphs.

By 24 & 25 Vict. c. 97, s. 37, "whosoever shall unlawfully and "maliciously cut, break, throw "down, destroy, injure or remove "any battery, machinery, wire, ca- "ble, post, or other matter or thing "whatsoever, being part of or being "used or employed in or about any "electric or magnetic telegraph, or "in the working thereof, or shall

"unlawfully and maliciously pre-"vent or obstruct in any manner "whatsoever the sending, convey-"ance or delivery of any communi-"cation by any such telegraph, "shall be guilty of a misdemeanor, " and, being convicted thereof, shall "be liable, at the discretion of the "court, to be imprisoned for any "term not exceeding two years, "with or without hard labour; pro-"vided, that if it shall appear to "any justice, on the examination of "any person charged with any of-"fence against this section, that it "is not expedient to the ends of "justice that the same should be " prosecuted by indictment, the just-"ice may proceed summarily to "hear and determine the same, and "the offender shall, on conviction "thereof, at the discretion of the "justice, either be committed to the "common gaol or house of correc-"tion, there to be imprisoned only, " or to be imprisoned and kept to " hard labour for any term not ex-" ceeding three months, or else shall " forfeit and pay such sum of money, "not exceeding 10l., as to the just-"ice shall seem meet."

By s. 38, "whosoever shall un-"lawfully and maliciously, by any " overt act, attempt to commit any " of the offences in the last preced-"ing section mentioned, shall, on " conviction thereof before a justice " of the peace, at the discretion of "the justice, either be committed "to the common gaol or house of "correction, there to be imprisoned "only, or to be imprisoned and "kept to hard labour for any term "not exceeding three months, or " else shall forfeit and pay such sum "of money, not exceeding 10l., as "to the justice shall seem meet."

XXXI. RAPE, ABUSE AND DE-FILEMENT OF WOMEN CHILDREN.

> Rape, 428. 430.

- (b) Upon whom Committed, 430. (c) Accomplishment or Completion, 431.
- (d) Indictment, 431.
- (e) Evidence, 432. (f) Where Triable, 435.
- 2. Abuse of Children, 435.
- Defilement, 438.

#### Rape.

By 24 & 25 Vict. c. 100, s. 48, "whosoever shall be convicted of "the crime of rape shall be guilty "of felony, and, being convicted "thereof shall be liable, at the dis-" cretion of the court, to be kept in " penal servitude for life, or for any "term not less than five years (27 " & 28 Vict. c. 47), or to be impris-"oned for any term not exceeding "two years, with or without hard " labour."

By s. 63, "whenever, upon the "trial for any offence punishable "under this act, it may be neces-"sary to prove carnal knowledge, "it shall not be necessary to prove "the actual emission of seed in or-"der to constitute a carnal knowl-"edge, but the carnal knowledge shall be deemed complete upon " proof of penetration only." (Former provision, 9 Geo. 4, c. 31, s. 18.)

By 9 Geo. 4, c. 31, 3 Edw. 1, c. 13, 13 Edw. 1, c. 34, 6 Rich. 2, c. 6, and 18 Eliz. c. 7, were repealed; and 24 & 25 Vict. c. 95, repeals 9 Geo. 4, c. 31, ss. 16, 17, 18, and 4 & 5 Vict. c. 56, s. 3.

To constitute rape it is not necessary that the connexion with the woman should be had against her will; it is sufficient if it is without her consent. Reg. v. Fletcher, Bell, C. C. 63; 5 Jur., N. S. 179; 28 L. J., M. C. 85; 7 W. R. 204; 8 Cox, C. C. 131.

Upon an indictment for rape, there must be some evidence that the act was without the consent of the woman, even where she is an idiot. In such a case, where there were no appearances of force having been used to the woman, and the (a) Who capable of Committing, only evidence of the connexion was

the prisoner's own admission, coupled with the statement that it was done with her consent:-Held, that there was no evidence for the jury. Reg. v. Fletcher, 1 L. R., C. C. 39; 12 Jur., N. S. 505; 35 L. J., M. C. 172; 14 L. T., N. S. 573; 14 W. R. 774.

Having carnal knowledge of a married woman, under circumstances which induced her to suppose it is her husband, does not amount to a rape. Rex v. Jackson, R. & R. C. C. 487.

If a man has connexion with a woman, she consenting under the belief that it is her husband, this is not a rape, though it is a fraud on the part of the man; but it is an assault; and the fact that there was no resistance on her part makes no difference, as the fraud is sufficient to make it an assault. Reg. v. Williams, 8 C. & P. 286—Alderson and Gurney; S. P., Reg. v. Saun-

ders, 8 C. & P. 265—Gurney. A. got into the bed of a married woman, intending if he could to have connection with her by passing for her husband, but not by force. She supposing him to be her husband allowed him to have connexion with her:—Held, that he was not guilty of rape. Reg. v. Clarke, Dears. C. C. 397; 24 L. J., M. C. 25; 18 Jur. 1059; 3 C. L. R. 86; 6 Cox, C. C. 412; S. P., Reg. v. Sweenie, 8 Cox, C. C. 223.

If in a case of rape the jury is satisfied that non-resistance on the part of the prosecutrix proceeded merely from her being overpowered by actual force, or from her not being able, from want of strength, to resist any longer, or that, from the number of persons attacking her, she considered resistance dangerous and absolutely useless, the jury ought to convict the prisoner of the capital charge; but if they think, from the whole of the circumstances, that although, when the prosecutrix was first laid hold of, it was against her will, yet that she did not | make the prisoner see and know

resist afterwards, because she in some degree consented to what was afterwards done to her, they ought to acquit the prisoners of the capital charge, and convict them of an assault only. Reg. v. Hallett, 9 C.

& P. 748—Coleridge.

On an indictment for an assault with intent to commit a rape, the prosecutrix stated, that the defendant, her medical man, being in her bed-room, directed her to lean forward on a bed, that he might apply an injection; she did so, and the injection having been applied, she found the defendant was proceeding to have a connexion with her, upon which she instantly raised herself, and ran out of the room. stated that the defendant had penetrated her person a little:—Held, that, if it had appeared that the defendant had intended to have had a connexion with the prosecutrix by force, the complete offence of rape would, upon this evidence, have been proved, but that the thus getting possession of the person of the woman by surprise, was not an assault with intent to commit a rape, but was an assault. Reg. v. Stanton, 1 C. & K. 415—Coleridge.

On a trial for a rape, it was proved that the prisoner made the prosecutrix drunk, and that when she was in a state of insensibility he took advantage of it and violated her. The jury convicted the prisoner, and found that he gave her liquor for the purpose of exciting her, and not with the intention of rendering her insensible, and then having sexual intercourse with her:-Held, that he was properly convicted of rape. Reg. v. Camplin, 1 C. & K. 746; 1 Den. C. C. 89.

The jury should be satisfied, not merely that the act was in some degree against the will of the woman, but that she was, by physical violence or terror, fairly overcome, and forced against her will, she resisting as much as she could, and so as to

utmost. Reg. v. Rudland, 4 F. &

F. 495—Crompton.

The rule is, that the connexion must be without the consent of the person alleged to have been ravished. Reg. v. Jones, 4 L. T., N. S. 154—Channell.

But where a father has established a kind of reign of terror in his family, and his daughter, under the influence of dread and terror, remains passive while he has connexion with her, he may be found guil-

Ib.ty of rape.

If a surgeon, professing to take steps to cure a girl of a complaint, has carnal connexion with her, and she is ignorant of the nature of his act, and makes no resistance, solely from a bona fide belief that he is, as he represents, treating her medically, with a view to her cure, his conduct in point of law amounts to an assault. Reg. v. Case, 19 L. J., M. C. 174; 1 Den. C. C. 580; 4 Cox, C. C. 220.

To constitute a rape on a woman conscious and capable of giving consent at the time of connexion, there must be an actual resistance of the will. Non-resistance to connexion, permitted under a misapprehension induced by the conduct of the man, by a woman conscious and capable of consenting, amounts to consent, though unintentional, and prevents the offence amounting to a rape. Reg. v. Barrow, 38 L. J., M. C. 20; 1 L. R., C. C. 156; 17 W. R. 102; 19 L. T., N. S. 293; 11 Cox, C. C. 191.

A woman, with her baby in her arms, was lying in bed between sleeping and waking, and her husband was asleep beside her. was completely awakened by a man having connexion with her, and pushing the baby aside. Almost directly she was completely awakened she found that the man was not her husband, and awoke her husband:—Held, that a conviction

that she was really resisting to the | for a rape upon these facts could not be sustained. Ib.

The prisoner was convicted of a rape upon the prosecutrix, who was an apparent idiot. She proved the act done, and said that it was wrong, but that she said nothing to the prisoner, and that she did not do anything to him, and that she did not like to hurt nobody. The constable told the prisoner that he was charged with committing a rape upon the prosecutrix and against her will. The prisoner, in answer to that, said, "Yes, I did; and I'm very sorry for it ":- Held, that there was evidence to sustain the conviction. Reg. v. Pressy, 17 L. T., N. S. 295; 16 W. R. 142; 10 Cox, C. C. 635—C. C. R.

On a charge of rape, there having been to some extent assent, and it being doubtful whether the act had been completed, it is necessary that the jury should be satisfied, before convicting either of a rape or of an assault, with intent to commit a rape, that the prisoner intended, notwithstanding any resistance on the part of the woman. Reg. v. Wright, 4

F. & F. 967—Channell.

On her cross-examination she cannot be contradicted from the depositions unless they are put in. Ib.

# Who Capable of Committing.

A boy under fourteen cannot be convicted of an assault with intent to commit a rape. Rex v. Eldershaw, 3 C. & P. 396—Vaughan.

And if he is under that age, no evidence is admissible to shew that, in point of fact, he could commit the offence of rape. Reg. v. Phillips, 8 C. & P. 736—Patteson; S. P., Reg. v. Jordan, 9 C. & P. 118— Williams.

# (b) Upon whom Committed.

The prisoner had carnal knowledge of a girl of thirteen by force. She was incapable of giving consent from defect of understanding, and

it was not shewn that the act was done against her will:—Held, that he was properly convicted of rape. Reg. v. Fletcher, Bell, C. C. 63; 28 L. J., M. C. 85; 8 Cox, C. C. 131.

But the mere fact of connexion with an idiot girl capable of recognizing and describing the prisoner, but incapable, so far as her idiotcy rendered her so, of expressing dissent or consent, and therefore without her consent, is not sufficient evidence of the commission of a rape upon her to be left to a jury. v. Fletcher, 35 L. J., M. C. 172; 1 L. R. C. C. 39; 12 Jur., N. S. 505; 14 L. T., N. S. 573; 14 W. R. 774.

Though a child under ten years of cannot legally consent to a rape upon her, yet she may consent to the attempt to commit it; and such an attempt, with her consent, would not be an assault. Where, therefore, a child is too young to know the nature of an oath, her evidence as to a rape upon her cannot be taken, and marks of violence on her private parts cannot be presumed to have been done against her con-Reg. v. Cockburn, 3 Cox, C. sent. C. 543—Patteson.

# (c) Accomplishment or Completion.

Any the slightest penetration is sufficient, even though it does not Rex v. Russen, break the hymen. 1 East, P. C. 438.

Penetration, short of rupturing the hymen, is sufficient to constitute the crime of rape. Reg. v. Hughes, 2 M. C. C. 190; 9 C. & P. 752.

Though it is not necessary, in order to complete the offence of rape, that the hymen should be ruptured, provided that it is clearly proved that there was penetration; yet where that which is so very near to the entrance has not been ruptured, it is very difficult to come to the conclusion that there has been penetration so as to sustain the charge. Reg. v. M'Rue, 8 C. & P. 641-Bosanquet.

rape is made out by proof of penetration only and in such case a prisoner must be found guilty, although there was no emission, and although he did not withdraw himself merely because he was satisfied. Rex v. Jennings, 4 C. & P. 249; 1 Lewin, C. C. 93—Hullock; S.P., Rex v. Reekspear, 1 M. C. C. 342.

To constitute penetration on a charge of this offence, the parts of the male must be inserted in those of the female; but, as matter of law, it is not essential that the hymen should be ruptured. Reg. v. Jordan,

9 C. & P. 118—Williams.

Since 9 Geo. 4, c. 31, s. 18, the only question for the jury is, whether the private parts of the man did or not enter into the person of the Therefore, though it appears from the evidence, beyond all possibility of doubt, that the party was disturbed immediately after penetration, and before the completion of his purpose, yet he must be found guilty of having committed the complete offence of rape. v. Allen, 9 C. & P. 31—Tindal.

In order to convict on a charge of assault with intent to commit. a rape, the jury must be satisfied not only that the prisoner intended to gratify his passions on the person of the prosecutrix, but that he intended to do so at all events, and notwithstanding any resistance on her Rex v. Lloyd, 7 C. & P. 318 part. --Patteson.

Proof of injectio seminis, as well as penetration, was essential in an indictment for rape, before 9 Geo. Rex v. Hill, 1 East, P. C. 439; S. P., Rex v. Cave, 1 East, P. C. 438; Rex v. Burrows, R. & R. C. C. 519; Rex v. Cozins, 6 C. & P. 351—Park.

# (d) Indictment.

By 14 & 15 Vict. c. 100, s. 9, "upon an indictment for a rape a "prisoner may be convicted of an "attempt to commit the same, and Since 9 Geo. 4, c. 31, the offence of | " will be liable to the same conse-

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"quences as if charged and convict-"ed of the attempt."

An indictment need not contain an express allegation of an assault. Reg. v. Allen, 2 M. C. C. 179; 9 C. & P. 521.

A. was convicted on an indictment, which charged that he "in and upon E. F.," "feloniously and violently did make (omitting the words 'an assault,')" and her, then and there, and against her will, violently and feloniously did ravish and carnally know:-Held, that the omission of the words, "an assault," was no ground for arresting the judgment. 16.

An indictment is good which charges that A. committed a rape, and that B. was present, aiding and assisting him in the commission of the felony. Reg. v. Crisham, Car.

& M. 187—Rolfe.

In such a case the party aiding may be charged either, as he was in law, a principal in the first degree, or as he was in fact, a principal in the second degree. Ib.

On an indictment charging a misdemeanor for an assault in attempting to commit a rape on A. B., with a count for an assault of the same nature on a different day on C. D., it is competent to the prosecutor, not only in law, but by ordinary practice, to give evidence of both assaults. Reg. v. Davies, 5 Cox, C. C. 328.

After an acquittal upon an indictment for rape, and for an assault with intent to commit a rape, the prisoner may be indicted for a common assault, upon which the prosecutrix can only in chief be asked so much as to elicit what would amount to a common assault; but the prisoner's counsel may, on crossexamination, enter into the original charge. Reg. v. Dungey, 4 F. & F.

99—Willes

A count charging A. with a rape as a principal in the first degree, and B. as a principal in the second degree, may be joined with another as to leave no reasonable doubt of

count, charging B. as principal in the first degree, and A. as principal in the second degree. Rex v. Gray, 7 C. & P. 164—Coleridge.

A general conviction of a prisoner charged both as principal in the first degree, and as an aider and abettor of other men in rape, is valid on the count charging him as Rex v. Folkes, 1 M. C. principal. C. 354.

On an indictment for rape charging the prisoner both as principal in the first degree, and as an aider and an abettor of other men in the rape, evidence may be given of several rapes on the same woman, at the same time, by the prisoner and other men, each assisting the other in turn, without putting the prosecutrix to elect on which count to proceed.

A first count charged an assault with intent to ravish; the second, a common assault. The record went on to state, that the jury found the defendant guilty of the misdemeanor and offence in the indictment specified, in manner and form by the indictment is alleged. against him, and the judgment was, imprisonment and hard labour:— Held, that the word "misdemeanor" was nomen collectivum, and that the finding of the jury was in effect, that the defendant was guilty of the whole matter charged, and that the judgment was therefore warranted by the verdict. Rex v. Powell, 2 B. & Ad. 75.

Before 14 & 15 Vict. c. 100, s. 12, a defendant would be acquitted on an indictment for an assault with intent to ravish, if the evidence amounted to proof of an actual rape. Rex v. Harmwood, 1 East, P. C. 411.

## (e) Evidence.

Of Prosecutria. —A prisoner may be convicted of rape upon the unsupported evidence of an infant under years of discretion, if the jury is satisfied that the evidence is such

his guilt. Anon., 1 Russ. C. & M. 932—Rooke.

Of Complaints.]—The particulars of the complaint made by a female on whom a rape has been committed are not receivable in evidence, nor even her statement as to the place of the commission of the crime; all that can be asked on examination in chief being the fact of her having made such complaint, and the nature of it. Reg. v. Mercer, 6 Jur. 243—Gurney.

On the trial of an indictment for a rape, it appeared that the person alleged to have been ravished but who was since dead, had come home evidently suffering from recent violence; it was proved, that on her return home she made a statement as to the injury she had received, and named the persons who had committed it :—Held, that the particulars of this statement could not be given in evidence as independent evidence, to shew who were the persons who committed the offence; and that statements of this kind were only admissible to confirm the evidence of the prosecutrix, by shewing that she made a recent complaint of the injury she bad received. Reg. v. Megson, 9 C. & P. 420— Rolfe.

Where the deposition of the prosecutrix taken before the magistrate was not proved, and she was not at the trial, evidence of complaints made by her recently after the outrage was rejected; no such evidence is receivable as confirmatory evidence only. Reg. v. Guttridges, 9 C. & P. 471—Parke.

A person to whom the prosecutrix made a complaint very recently after the offence, as she was on her way home, may be asked whether she named a person as having committed the offence, but not whose name she mentioned. Reg. v. Osborne, Car. & M. 622—Cresswell.

Fish. Dig.—32.

The fact of the prosecutrix making complaint of the outrage, and the state in which she was at the time of making the complaint, are evidence. Rex v. Clarke, 2 Stark. 241—Holroyd.

On a trial for a rape, or for an attempt to commit a rape, the female assaulted may be confirmed by proof that she recently, after the alleged outrage, made a complaint, but the particulars of what she said cannot be asked in chief of the confirming witness, but may in cross-examination. Reg. v. Walker, 2 M. & Rob. 212—Parke.

Not only what the prosecutrix said immediately after the occasion, but what was said in answer to her, is evidence. *Reg.* v. *Eyre*, 2 F. & F. 579—Byles.

On a trial for a rape, the prosecutrix, a servant, stated that she made almost immediate complaint to her mistress, and that on the next day a washerwoman washed her clothes. on which was blood. Neither the mistress nor the washerwoman was under recognizances to give evidence, nor were their names on the back of the indictment, but they were at the assizes attending as witnesses for the The judge directed that prisoner. both the mistress and the washerwoman should be called by the counsel for the prosecution, but allowed the counsel for the prosecution every latitude in their examination. Reg. v. Stroner, 1 C. & K. 650—Pollock.

To Impeach Character of Prosecutrix.]—On the trial of an indictment for rape, the prosecutrix may be asked whether, previously to the commission of the alleged offence, the prisoner had not had intercourse with her by her own consent. Rex v. Martin, 6 C. & P. 562—Williams.

Under an indictment for an assault to commit a rape, the defendant may impeach the prosecutrix's

character for chastity by general, but not by particular evidence. Reg. v. Clarke, 2 Stark. 241—Holroyd.

But the character of the prosecutrix as to general chastity may be impeached by general evidence. Ib.

The prisoner may give evidence that the woman bore a notoriously bad character for want of chastity and common decency, or that she had before been criminally connected with the prisoner; but he cannot shew that she had a criminal connexion with other persons. Rex v. Hodgson, R. & R. C. C. 211-Gurney.

Nor is the woman obliged to answer as to the latter fact.

On the trial of an indictment for a rape, held, that the prisoner's counsel might ask the prosecutrix the following questions, with a view to contradict her: "Were you not on ———, (since the time of the alleged offence), walking in the Highstreet at Oxford to look out for men?" "Were you not, on -(since the time of the alleged offence), walking in the High-street with a woman reported to be a common prostitute?" Rex v. Barker, 3 C. & P. 589—Park and Parke.

Held, also, that evidence might be adduced by the prisoner to shew the general light character of the prosecutrix, and that general evidence might be given of her being a street-walker. Ib.

The prosecutrix may be asked, on cross-examination, whether she had not allowed another man than the prisoner to take liberties with her, in the interval between the commission of the alleged offence and the first complaint of it. Mercer, 6 Jur. 243—Gurney.

A prosecutrix, on a charge of rape, having, on cross-examination, said that she had herself been charged with stealing money, and on that occasion had accounted to a police constable for the possession of the money by stating that it was person who had insulted her by solicitations against her chastity, but denied that she had said the money was given her for having connexion with him:—Held, that the prisoner could not call the constable as a witness to contradict the prosecutrix, by proving that she had said that the money was given her for that purpose. Reg. v. Dean, 6 Cox, C. C. 23—Platt.

But the prosecutrix having, on cross-examination, denied that she had connexion with other men than the prisoner, those men may be called to contradict her. Reg.v. Robins, 2 M. & Rob. 512-Col-

eridge.

It appeared that the prisoner had been taken before the mayor of N., charged with rape; and that the prosecutrix was sworn, and her statement taken down by the mayor, who asked her some further questions, the answers to which were taken down, and the prisoner was discharged. That which was taken down by the mayor was not read over to the prosecutrix, neither was it signed by her or by the mayor. The prisoner was afterwards committed for trial by other magistrates: -Held, that at the trial the prisoner's counsel might cross-examine the prosecutrix as to what she said before the mayor of N., without the production of that which was taken down on that examination. v. Griffiths, 9 C. & P. 746—Coleridge.

On a trial for rape, evidence of the general character of the prosecutrix, as that she had been a reputed prostitute, is admissible. Reg: v. Clay, 5 Cox, C. C. 146.

Proof of Subsequent Acts. —On an indictment for rape on a child under ten, evidence was admitted of subsequent perpetrations of the same offence on different days previously to complaint to the mother, it appearing that the prisoner had given her for not complaining of a threatened the child on the first

occasion:—Held, that, virtually, it was in such a case all one continuous offence. Reg. v. Rearden, 4 F. & F. 76—Willes.

On an indictment for an assault with an intent to commit a rape, evidence that the prisoner on a prior occasion had taken liberties with the prosecutrix, is not receivable to shew the prisoner's intent. Rex v. Lloyd, 7 C. & P. 318—Patteson.

Proof of Age.]—Family discussion as to birth-day, and acts done on the reputed day, are evidence for the jury as to the age of an infant prosecutrix, on whom a rape is charged to have been committed. Reg. v. Hayes, 2 Cox, C. C. 226—Coltman.

*Identity of Accused.*]—In a case of rape against five, the prosecutrix, when before the grand jury, did not know the names of the different prisoners, but could identify the persons:—Held, that the grand jury might call in another witness, who was before the examining magistrate, and there saw the prisoners, and let the prosecutrix describe the different prisoners, and the other witnesses give their names; and that, if the prisoners could not be identified by this mode, they might be brought before the grand jury. Reg. v. Jenkins, 1 C. & K. 536—Tindal.

Depositions.]—If it is proved on the part of the prosecutrix that the party alleged to have been ravished has been kept out of the way by the prisoners, the judge will allow her deposition before the magistrate to be given in evidence. Reg. v. Guttridges, 9 C. & P. 471—Parke.

In an indictment for a rape, the deposition of a girl taken before the committing magistrate, and signed by him, may, after her death, be read in evidence at the trial of the prisoner, although it was not signed by her, and she was under twelve years of age, provided she

was sworn, and appeared competent to take an oath; and all the facts necessary to complete the crime may be collected from her testimony so given in evidence. Rex v. Flemming, 2 Leach, C. C. 854; 1 East, P. C. 440.

## (f) Where Triable.

By 4 & 5 Vict. e. 56, s. 6, "the "erime of rape shall not be tried, or "triable, before any justice of the "peace at any general quarter sessions of the peace."

#### 2. Abuse of Children.

The Offence. —By 24 & 25 Vict. c. 100, s. 50, "whosoever shall un"lawfully and carnally know and
"abuse any girl under the age of
"ten years shall be guilty of felony,
"and, being convicted thereof, shall
"be liable, at the discretion of the
"court, to be kept in penal servi"tude for life, or for any term not
"less than five years (27 & 28 Vict.
"c. 47), or to be imprisoned for
"any term not exceeding two years,
"with or without hard labour."
(Previous provision, 9 Geo. 4, c. 31,
s. 17.)

By s. 51, "whosoever shall un"lawfully and earnally know and
"abuse any girl being above the
"age of ten years and under the
"age of twelve years shall be guilty
"of a misdemeanor, and, being con"victed thereof, shall be liable, at
"the discretion of the court, to be
"kept in penal servitude for the
"term of five years (27 & 28 Vict.
"c. 47), or to be imprisoned for any
"term not exceeding two years,
"with or without hard labour."
(Previous provision, 9 Geo. 4, c. 31,

By s. 52, "whosoever shall be eonvicted of any indecent assault upon any female, or of any attempt to have carnal knowledge of any girl under twelve years of age, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two

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"years, with or without hard la"bour."

If, on the trial of an indictment for carnally knowing and abusing a female child under ten, the jury is satisfied that, at any time, any part of the virile member of the prisoner was within the labia of the pudenda, no matter how little, this is sufficient to constitute a penetration, and the jury ought to convict. Reg. v. Lines, 1 C. & K. 393—Parke.

Attempting to carnally know and abuse a girl between the ages of ten and twelve is not an assault, if the girl consents to all that is done, but is a misdemeanor. Reg. v. Martin, 9 C. & P. 213; 2 M. C. C. 123.

The person making such attempt, with the consent of the girl, is not indictable for an assault, but is indictable for the misdemeanor of attempting to commit the misdemeanor of carnally knowing and abusing her. Ib.

An indecent assault committed upon a girl between the age of ten and twelve, with her consent is not indictable. Reg. v. Johnson, L. & C. 632; 10 Cox, C. C. 114; 11 Jur., N. S. 532; 34 L. J., M. C. 192; 13 W. R. 815; 12 L. T., N. S. 503.

But on an indictment for attempting to have carnal knowledge of a girl under ten years, being a misdemeanor, consent by the girl is no defence and is immaterial. Reg. v. Beale, 35 L. J., M. C. 60; 14 W. R. 57; 13 L. T., N. S. 335; 10 Cox, C. C. 157; 1 L. R., C. C. 10; 12 Jur., N. S. 12.

On an indictment for attempting to carnally know and abuse a girl under ten, with a count for a common assault. The attempt was proved, but it could not be shewn that the child was under ten years of age, and it also appeared that no violence was used by the prisoner, and no actual resistance made by the girl:—Held, that although consent on the part of the girl would

put an end to the charge of assault, yet that there was a great difference between consent and submission, and that, although, in the case of an adult, submitting quietly to an outrage of this kind would go far to shew consent, yet that, in the case of a child, the jury should consider whether the submission of the child was voluntary on her part, or was the result of fear under the circumstances in which she was placed. Reg. v. Day, 9 C. & P. 722—Coleridge.

If, on the trial of an indictment for a misdemeanor in carnally knowing and abusing a girl between the age of ten and twelve, it appears that the prisoner effected his purpose by force, and against the girl's will, this is no ground of acquittal. Reg. v. Neale, 1 C. & K. 591; 1 Den. C. C. 36.

On an indictment for carnally knowing and abusing a girl under ten, the prisoner may be acquitted of the felony, and convicted of an assault. Reg. v. Folkes, 2 M. & Rob. 460—Rolfe.

An assault is within the rule that fraud vitiates consent, and therefore when a man, knowing that he had a foul disease, induced a girl of thirteen, who was ignorant of his condition, to consent to sleep with him and he infected her:—Held, that he might be convicted of an indecent assault. Reg. v. Bennet, 4 F. & F. 1105—Willes.

Under an indictment for unlawfully assaulting and having carnal knowledge of a girl between ten and twelve years of age, the prisoner may be convicted of the attempt to commit that offence. Reg. v. Ryland, 18 L. T., N. S. 538; 16 W. R. 941; 11 Cox, C. C. 101—C. C. R.

Who capable of Committing.]—A boy under fourteen cannot, by law, be convicted of feloniously carnally knowing and abusing a girl under ten, even though it was proved that

he had arrived at the full state of puberty. Reg. v. Jordan, 9 C. & P. 118—Williams.

Three boys, under fourteen years of age, were indicted for assaulting a girl nine years of age. It was proved that each of the boys had connexion with her. The jury returned as their verdict, "that the prisoners were guilty, the child being an assenting party; but that from her tender years she did not know what she was about ":--Held. upon this finding, a verdict of acquittal must be entered. Reg. v. Read, 19 L. J., M. C. 88; 2 C. & K. 957; 1 Den. C. C. 377; 3 Cox, C. C. 266.

A schoolmaster, who places his hands indecently on the person of a female pupil, is guilty of an indecent assault, although the pupil is thirteen years of age, and does not make any actual resistance. Reg. v. M'Gavaran, 6 Cox, C. C. 64—Williams.

Letters relating to the charge written by one of the scholars who is examined as a witness for the prosecution, may, on her denial of the handwriting, be proved and given in evidence on the part of the defendant for the purpose of affecting the witness's credit, and shewing the capacity of the scholars to conspire to make a false charge against him, although the prosecutrix is not proved to have received the letters, or had any knowledge of their contents. *Ib*.

Indictment.]—An indictment in the first count charged the defendant with having assaulted "E. R., an infant above the age of ten and under the age of twelve," with intent to carnally know and abuse her; and in the second count charged that the defendant "unlawfully did put and place the private parts of him, the said T. M., against the private parts of her, the said E. R., and did thereby then and there unlawfully attempt and endeavour to lightized by Microsoft®

carnally know and abuse the said E. R.":—Held, that the second count was bad, as it did not allege that E. R. was between the ages of ten and twelve. Reg. v. Martin, 9 C. & P. 215—Patteson.

Held, also, that the words "the said E. R." merely meant that she was the same person as was mentioned in the first count, but that those words did not import into the second count the description of E. R. with respect to her age. Ib.

A prisoner was indicted for the misdemeanor of carnally knowing a girl between the age of ten and twelve. The case was proved, but the girl was under ten:—Held, that he must be acquitted, and the 14 & 15 Vict. c. 100, s. 12, did not apply. Reg. v. Shott, 3 C. & K. 206—Maule.

A count in an indictment charging that a defendant did attempt to assault a girl by soliciting and inducing her to place herself in an indecent attitude, he doing the like, is bad. Rex v. Butler, 6 C. & P. 368—Patteson.

Where an indictment charged the defendant with an assault and an intent to abuse and carnally know a female child:—Held, that he might be convicted of an assault to abuse her simply, as the averment of such intention is divisible. Rex v. Dawson, 3 Stark. 62—Holroyd.

On an indictment for an assault, &c., if penetration is proved, the prisoner cannot be convicted of the attempt. Reg. v. Nicholls, 2 Cox, C. C. 182—Rolfe.

An indictment (whether for the felony or for an attempt to commit it), founded on 24 & 25 Vict. c. 100, s. 50, which makes it a felony to "carnally know and abuse any girl under the age of ten years," is sufficient if it uses the words "carnally know" only, and omits the word "abuse." Reg. v. Holland, 16 L. T., N. S. 536; 15 W. R. 879; 10 Cox, C. C. 478—C.

Evidence.]—In cases of carnal knowledge of children, the infant witness, though under seven years of age, if apprised of the nature of an oath, must be sworn. Rex v. Brasier, 1 Leach, C. C. 199; 1 East, P. C. 443.

In a case of carnally knowing and abusing a girl under ten years old, it appeared, on an application on the part of the prosecution to postpone the trial, that the girl was only six years old, and, by reason of her age, quite incompetent to take an oath;—Held, that the trial ought not to be postponed in order that the child might be instructed as to the nature of an oath; but that there might be cases of children of more matured intellect, e. g. of ten or twelve years old who might be from neglected education incapable of being sworn, in which such a postponement might be prop-Reg. v. Nicholas, 2 C. & K. 246—Pollock; S. P., Rex v. Williams, 7 C. & P. 320.

Where in such a case the child, from her tender age, was incompetent to be sworn, the judge would not receive evidence of what the child stated to her mother shortly after the alleged offence took place, nor allow the mother to prove that the child mentioned to her the name of any particular person. Ib.

A prisoner was charged with carnally abusing a child under ten, on February 5, 1832. To prove the child under ten years, an examined copy of the register of her baptism on February 9, 1822, was put in, and her father stated, that he left his house about a week before the 9th of February, 1822, his wife not being then confined; and that on his return on that day he found this child, and was told by his wife's mother that it had been born on the day before:—Held, that this was not sufficient evidence of the child's being under ten years. Rex v. Wedge, 5 C. & P. 298—Littledale and Taunton.

A mother stated that a child was ten years old last March, but on cross-examination her evidence as to the knowledge of her children's ages seemed by no means The evidence, though objected to as too unsatisfactory to leave to the jury on a charge of carnally knowing and abusing a girl under the age of twelve, was submitted to the jury, who found that the girl was under twelve, and convicted the prisoner of the charge: -Held, that the conviction must be affirmed. Reg. v. Nicholls, 10 Cox, C. C. 476; 16 L. T., N. S. 466; 15 W. R. 795—C. C. R.

#### 3. Defilement.

By 24 & 25 Vict. c. 100, s. 49, "whosoever shall, by false pre-"tences, false representations or "other fraudulent means, procure "any woman or girl under the age "of twenty-one years to have illicit "carnal connexion with any man, "shall be guilty of a misdemeanor, " and, being convicted thereof, shall " be liable, at the discretion of the "court, to be imprisoned for any "term not exceeding two years, with " or without hard labour." lar to 12 & 13 Vict. c. 76, Bishop of Oxford's Act (S. Wilberforce), repealed by 24 & 25 Vict. c. 95.)

A conspiracy to procure by false pretences, false representations and other fraudulent means, a young girl to have illicit carnal connexion with a man, is a misdemeanor at common law. Reg. v. Mears, 2 Den. C. C. 79; 20 L. J., M. C. 59.

# XXXII. RIOTS AND UNLAWFUL ASSEMBLIES.

- 1. Nature and Character, 439.
- Illegal Training and Drilling, 440.
   Duties of the Magistracy, 440.
- 4. Aiding and Assisting the Constabulary, 441.
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   Injuries to Property by Rioters.

#### 1. Nature and Character.

(1 Geo. 1, stat. 2, c. 5; 7 Will. 4 & 1 Vict. c. 91; 3 Geo. 4, c. 114.)

If, in reading the proclamation from the Riot Act, the magistrate omits to read the words "God save the King" at the end of it, persons remaining together for an hour after such reading of the proclamation could not be capitally convicted under 1 Geo. 1, stat. 2, c. 5, s. 1. Rex v. Child, 4 C. & P. 442— Vaughan and Alderson.

If the proclamation is read several times, the hour is to be computed from the first reading. v. Woolcock, 5 C. & P. 516—Patte-

If there is such an assembly that there would have been a riot if the parties had carried their purpose into effect, this is within the statute; and whether there was a cessation or not, is a question for the jury.

All those who assemble themselves together with an intent even to commit a trespass, the execution whereof causes a felony to be committed, and continue together abetting one another till they have actually put their design into execution, and also all those who are present when a felony is committed, and abet the doing of it, are principals in the felony. Reg. v. Howell, 9 C. & P. 437—Littledale.

Any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighborhood, is an unlawful assembly; and, in viewing this question, the jury should take into their consideration the hour at which the parties meet, and the language used by the persons assembled, and by those who addressed them, and then consider whether firm and rational men, having their families and property there, would have reasonable. ground to fear a breach of the if a meeting is illegal, a party who

peace; as the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage. Reg. v. Vincent, 9 C. & P. 91—Alderson.

An assembly of great numbers of persons, which from its general appearance and accompanying circumstances, is calculated to excite terror, alarm and consternation, is generally criminal and unlawful. Rex v. Hunt, 1 Russ. C. & M. 388 —Bayley and Holroyd. See Rex v. Hunt, 3 B. & A. 566.

And all persons who join an assembly of this kind, disregarding its probable effect, and the alarm and consternation that are likely to ensue, and all who give countenance and support to it, are criminal parties.

Any assembly of persons attended with circumstances calculated to excite alarm, is an unlawful assembly. Reg. v. Neale, 9 C. & P. 431.—Littledale.

If parties assemble together for a purpose, which, if executed, would make them riotous; but, having assembled, they do nothing, and separate without carrying their purpose into effect, this is an unlawful assembly. Rex v. Birt, 5 C. & P. 154 -Patteson.

A riot is not the less a riot, nor is an illegal meeting the less an illegal meeting, because the proclamation from the riot act has not been read, the effect of that proclamation being to make the parties guilty of a transportable offence if they do not disperse within an hour; but if that proclamation is not read, the common law offence remains, which is a misdemeanor, and all magistrates, constables, and even private individuals, are justified in dispersing the offenders; and if they cannot otherwise succeed in doing so, they may use force. Rex v. Fursey, 6 C. & P. 81—Gaselee and Parke.

Without any proclamation at all,

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guilty of an offence. 16.

A meeting called to adopt preparatory measures for holding a national convention, is an illegal meet-

Although a man may arm himself and his friends for the defence of the possession of his house against such as threaten to make an unlawful entry, he cannot lawfully do the same in defence of his close. v. Bangor (Bishop), 1 Russ. C. & M. 388—Heath.

If persons are assembled together to the number of three or more, and speeches are made to those persons to excite and inflame them, with a view to incite them to acts of violence, and if that same meeting is so connected in point of circumstances with a subsequent riot, that you cannot reasonably sever the latter from the incitement that was used, those who incited are guilty of the riot, although they are not present when it occurs. Reg. v. Sharpe, 3 Cox, C. C. 288—Wilde, C. J.

If four are indicted for a riot, and two die before trial, and two are found guilty, judgment will not be arrested. Rex v. Scott, 3 Burr.

1262; 1 W. Bl. 350.

# 2. Illegal Training and Drilling.

A count in an indictment, under 60 Geo. 3 & 1 Geo. 4, c. 1, the 1st section of which prohibits assemblies of persons for the purpose of unlawfully practising military exercise, and then goes on to impose a penalty on all persons who shall train or drill any other persons, or who shall be trained or drilled, is not bad for duplicity, though it charges the offence which is prohibited, and the offence for which a penalty is imposed. Reg. v. Hunt, 3 Cox, C. C. 215 — Maule. See Gogarty v. Reg., 3 Cox, C. C. 306.

# Duties of the Magistracy.

A magistrate called upon to sup-

attends it, knowing it to be so, is all he knows to be in his power that can reasonably be expected from a man of honesty and of ordinary prudence, firmness and activity, under the circumstances. Mere honesty of intention is no defence, if he fails in his duty. Rex v. Pinney, 3 B. & Ad. 947; 5 C. & P. 254.

Nor will it be a defence that be acted upon the best professional advice that could be obtained, on legal and military points, if his conduct has been faulty in point of

law.

In suppressing a riot, he is not bound to head the special constables, or to arrange and marshal them; this is the duty of the chief constables.

Magistrates are not criminally answerable for not having called out special constables, and compelled them to act pursuant to 1 & 2 Will. 4, c. 41, unless it is proved that information was laid before them, on oath, of a riot having occurred or being expected.

A magistrate is not chargeable with neglect of duty for not having called out the posse comitatus in case of a riot, if he has given the king's subjects reasonable and timely warning to come to his as-

sistance. 1b.

A magistrate who calls upon soldiers to attack a mob and suppress a riot is not bound to go with them; it is enough if he gives them his authority. Ib.

A magistrate may assemble all the king's subjects to quell a riot, and may call in the soldiers, who are subjects, and may act as such; but this should be done with great caution. Rex v. Kennet, 5 C. & P. 282, n.

At the time of a riot, a magistrate may repel force by force, before the reading of the proclamation from the riot act. Ib.

If, on a riot taking place, a magistrate neither reads the proclamation from the riot act, nor restrains press a riot is required by law to do | nor apprehends the rioters, nor gives

any order to fire on them, nor makes any use of a military force under his command, this is primâ facie evidence of a criminal neglect of duty in him; and it is no answer to the charge for him to say that he was afraid, unless his fear arose from such danger as would affect a firm man; and if, rather than apprehend the rioters, his sole care was for himself, this is also neglect. *Ib*.

It is not only lawful for a magistrate to disperse an unlawful assembly, even when no riot has occurred; but if they do not do so, and are guilty of criminal negligence in not putting down any unlawful assembly, they are liable to be prosecuted for a breach of their duty. Reg. v. Neale, 9 C. & P. 431—Littledale.

The mode of dispersing an unlawful assembly may be very different according to the circumstances attending it in each particular case; and an unlawful assembly may be so far verging towards a riot, that it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly; and there may be cases where the magistrates will be bound to use force to disperse an unlawful assembly. *Ib*.

# 4. Aiding and assisting the Constabulary.

To support an indictment against a person for refusing to aid and assist a constable in the execution of his duty in quelling a riot, it is necessary to prove-first, that the constable saw a breach of the peace committed; secondly, that there was a reasonable necessity for calling on the defendant for his assistance; and thirdly, that when duly called upon to assist the constable, the defendant, without any physical impossibility or lawful excuse, refused to do so; and in such a case it is no ground of defence that from the number of rioters the single aid of the defendant would not have been of any use. Reg. v. Brown, Car. & M. 314—Alderson.

A person charged to aid a constable, and who does so, is protected eundo, morando et redeundo, Reg. v. Phelps, Car. & M. 180—Coltman.

#### 5. Indictment.

If an indictment on 1 Geo. 1, stat. 2, c. 5, s. 1, for remaining assembled one hour after proclamation, in setting out the proclamation omits the words "of the reign of," which were contained in the proclamation read by the magistrate—this is a variance (but amendable under 14 & 15 Vict. c. 100, s. 24). Rex v. Woolcock, 5 C. & P. 516—Patteson.

Twelve persons were indicted for a riot and assaulting J. W. The indictment did not conclude in terrorem populi. Several of the defendants had been convicted, and, at the ensuing assize, at which the remaining defendants were tried, there was evidence that they had joined in the riot, but there was no proof of any assault, except in the words "po. se," and "guilty," written on the indictment, over the names of the convicted defendants:

—Held, that this was no proof of

an assault as against the present defendants, and that they could not be convicted of the riot only, as the indictment did not conclude in terrorem populi. Rex v. Hughes, 4 C. & P. 373. But see 14 & 15 Vict. c. 100, s. 24.

If persons are charged with a riot, and entting down fences, and the indictment does not conclude in terrorem populi, they cannot on that indictment be convicted of a riot, but may be convicted of an unlawful assembly. Rex v. Cox, 4 C. & P. 538—Patteson.

An indictment on 1 Geo. 1, stat. 2, c. 5, s. 1, for remaining assembled one hour after proclamation made, need not charge the original riot to

have been in terrorem populi. Rex v. James, 5 C. & P. 153—Patteson.

An indictment containing two counts, one for a riot, and the other for an assault, found by the grand jury, a true bill as to the assault and ignoramus as to the riot, is good. Rex v. Fieldhouse, Cowp. 325.

#### 6. Evidence.

On an indictment for a riot, the parties charged must be proved to have been present before the fact of the riot can be given in evidence. Nicholson's case, 1 Lewin, C. C. 300—Alderson.

But it has since been held that the prosecutor is entitled to prove the acts of any of the rioters before he connects the others with the riot. Reg. v. Cooper, 1 Russ. C. & M. 405—Williams.

7. Injuries to Property by Rioters.

The Offence.] By 7 & 8 Geo. 4, c. 27, the 9 Geo. 3, c. 29, 52 Geo. 3, c. 130, and 56 Geo. 3, c. 125, were wholly repealed; and the 1 Geo. 1, st. 2, c. 5, was partially repealed. The 7 & 8 Geo. 4, c. 27, repealed so much of 22 & 23 Car. 2, c. 11, and 33 Geo. 3, c. 67, as related to this subject; and 9 Geo. 4, c. 31, wholly repealed 43 Geo. 3, c. 113. The 24 & 25 Vict. c. 95, repeals 7 & 8 Geo. 4, c. 30, s. 8; 4 & 5 Vict. c. 56, s. 2; and 6 & 7 Vict. c. 10.

See L. C. J. Tindal's Charge on the Bristol Special Commission in 1832, 5 C. & P. 265, n.

By 24 & 25 Vict. c. 97, s. 11, "if "any persons, riotously and tumult-"uously assembled together to the "disturbance of the public peace, "shall unlawfully and with force demolish or pull down or destroy, or begin to demolish, pull down or destroy, any church, chapel, "meeting-house or other place of divine worship, or any house, stable, coachhouse, outhouse, ware-"house, office, shop, mill, unalt-

"house, hop-oast, barn, granary, "shed, hovel or fold, or any build-"ing or erection used in farming "land, or in carrying on any trade "or manufacture or any branch "thereof, or any building, other "than such as are in this section "before mentioned, belonging to "the Queen, or to any county, rid-"ing, division, city, borough, poor-"law union, parish or place, or be-"longing to any university, or col-"lege or hall of any university, or "to any inn of court, or devoted "or dedicated to public use or or-"nament, or erected or maintained "by public subscription or contribu-"tion, or any machinery, whether "fixed or movable, prepared for or "employed in any manufacture, or "in any branch thereof, or any "steam-engine or other engine for "sinking, working, ventilating or "draining any mine, or any staith, "building or erection used in con-"ducting the business of any mine, "or any bridge, waggon-way or "trunk for conveying minerals "from any mine, every such of-"fender shall be guilty of felony, "and, being convicted thereof, shall "be liable, at the discretion of the " court, to be kept in penal servitude "for life, or for any term not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour and "with or without solitary confine-" ment." (Former enactment, 7 & 8 Geo. 4, c. 30, s. 8.)

By s. 12, "if any persons, riot"ously and tumultuously assembled
"together to the disturbance of
"the public peace, shall unlawfully
"and with force injure or damage
"any such church, chapel, meeting"house, place of divine worship,
"house, stable, coachhouse, ont"house, warehouse, office, shop,
"mill, malthouse, hop-oast, barn,
"granary, shed, hovel, fold, build"ing, erection, machinery, engine,
"staith, bridge, waggon-way or

"trunk, as in the last preceding " section mentioned, every such of-"fender shall be guilty of a mis-"demeanor, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept "in penal servitude for any term "not exceeding seven and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, with " or without hard labour: provided, that if, upon the trial of any per-" son for any felony in the last pre-" ceding section mentioned, the jury "shall not be satisfied that such " person is guilty thereof, but shall "be satisfied that he is guilty of "any offence in this section men-"tioned, then the jury may find "him guilty thereof, and he may be " punished accordingly."

It is not a beginning to demolish a house within 7 & 8 Geo. 4, c. 30, s. 8, unless the jury is satisfied that the ultimate object of the rioters was to demolish the house, and that, if they had carried their intention into full effect, they would, in point of fact, have demolished it. Rex v. Thomas, 4 C. & P. 237—

Littledale.

An indictment for feloniously beginning to demolish a house cannot be supported unless the persons committing the outrage had an intention of destroying the house; and, therefore, where considerable damage was done to a house by a mob, who did this with an intention of seizing a person who had taken refuge in the house:—Held, to be not within the statute. Rex v. Price, 5 C. & P. 510—Tindal.

Every man has a right to work for the best price he can get, but if others choose to work for less than the usual prices, the law will not permit that violence should be committed towards them, or towards those by whom they are employed, or those with whom they are connected. Where a party of coalwhippers, having a feeling of ill-

will towards a coal-lumper, who paid less than the usual wages, created a mob, and riotously went to the house where he kept his paytable, and cried out that they would murder him, and began to throw stones, and broke windows, and partitions, and part of a wall, and continued, after his escape, throwing stones at the house till they were compelled to desist by the threats of the police:—Held, that they might be convicted of beginning to demolish under 7 & 8 Geo. 4, c. 30, s. 8, though their principal object was to injure the lumper; provided it was also their object to demolish the house, either on account of its being used by him, or by his men, and though they had not any ill-will against the owner of the house personally. Reg. v. Batt, 6 C. & P. 329—Gurney.

A. and others were indicted for feloniously demolishing the house of It was proved that A. and a mob of persons assembled at H.; A. there addressed the mob in violent language, and led them in a direction towards a police-office about a mile from H., some of the mob from time to time leaving, and others At the police-office the joining. mob broke the windows, and then went and attacked the house of B., and set it on fire, A. not being present at the attack on the house or at the fire:—Held, that on this state of facts A. ought not to be convicted of the demolition, as it did not sufficiently appear what the original design of the mob at H. was, nor whether any of the mob who were at H. were the persons who demolished B.'s house. Reg. v. Howell, 9 C. & P. 437—Little-

dale.

If rioters attack a house, and have begun to demolish it, but leave off of their own accord, after having gone a certain length, and before the act of demolition is completed, this is evidence from which a jury might infer that they did not

RIOTS.

if the mob was prevented from going on by the interference of the police, or any other force, that would be evidence to shew that they were compelled to desist from that which they had designed, and it would be for the jury to infer that they had begun to demolish within 7 & 8 Geo. 4, c. 80, s. 8.

Destroying movable shop-shutters is not a beginning to demolish within that statute, as they are not

part of the freehold. Ib.

If rioters destroy a house by fire, that is as much a demolition as if any other mode of destruction were used. Ib.

If a part of the object of rioters is to demolish a house, it makes no difference that they also acted with another object, such as to injure a person who had taken refuge there. Ib.

On an indictment under 7 & 8 Geo. 4, c. 30, s. 8, for riotously beginning to demolish, and demolishing a dwelling-house, total demolition is not necessary, though the parties were not interrupted. If the house is destroyed as a dwellinghouse, it is enough. Reg. v. Phillips, 2 M. C. C. 252; S. C. nom. Reg. v. Langford, Car. & M. 602.

Four men, members of, and connected with the family of, the owner of the cottage, with great violence, and to his great terror, drove him from it, and pulled it down all but the chimney:—Held, sufficient to satisfy the statute, though no other persons were within reach of the alarm; they having no bonâ fide claim of right, but intending to injure the owner. Ib.

The 7 & 8 Geo. 4, c. 30, s. 8, not having given any definition of what shall be a riot within the meaning of that enactment, the commonlaw definition of a riot must be resorted to, and in such a case, if any one of her Majesty's subjects is terrified,

intend to demolish the house; but to substantiate that part of the

charge of riot. Ib.

If persons riotously assemble and demolish a house, really believing that it is the property of one of them, and act bona fide in the assertion of a supposed right, this will not be a felonious demolition of the house within 7 & 8 Geo. 4, c. 30, s. 8, even though there was a riot. Ĭb.

If rioters destroy a house by fire, this is a felonious demolition of it within 7 & 8 Geo. 4, c. 30, s. 8, and the person guilty of such an offence may be convicted of an indictment founded on that enactment, and need not be indicted for arson. Reg. v. Harris, Car. & M. 661-Tindal, Parke and Rolfe. S. P., Reg. v. Christian, 12 L. J., M. C. 26— Wightman.

If, in a case of feloniously demolishing a house by rioters, it appears that some of the prisoners set fire to the house itself, and that others carried furniture out of the house and burnt it in a fire made on the gravel-walk on the outside of the house, it will be for the jury to say whether the latter were not encouraging and taking part in a general design of destroying the house and furniture; and if so, the jury ought to convict them.

A prisoner had been committed on a charge of high treason, and afterwards the grand jury returned a true bill against him, with others, for feloniously demolishing a house, under 7 & 8 Geo. 4, c. 30, s. 8. He pleaded to that indictment, and wished to be tried after the other prisoners, who were indicted with him for feloniously demolishing the house, on the ground that he had had no copy of any depositions as to that charge. But this was not allowed, as the prosecution might have been commenced without going before any magistrate, and then there would have been no depositions at all. Reg. v. Simpson, Car. this is a sufficient terror and alarm & M. 669—Tindal, Parke and Rolfe.

If a house is demolished by rioters by means of fire, one of the rioters, who is present while the fire is burning, may be convicted for the felonious demolition under 7 & 8 Geo. 4, c. 30, s. 8, although he is not proved to have been present when the house was originally set on fire. Ib.

#### XXXIII. Robbery.

- 1. The Offence, 445.
- 2. Garotting, 448.
- 3. Indictment, 449.
- 4. Evidence, 449.
- 5. Assault with Intent to Rob, 450. 6. Punishment of Whipping, 452.

## 1. The Offence.

By 24 & 25 Vict. c. 96, s. 40, "whosoever shall rob any person, " or shall steal any chattel, money, " or valuable security from the per-"son of another, shall be guilty of "felony, and, being convicted there-"of, shall be liable, at the discre-"tion of the court, to be kept in " penal servitude for any term not "exceeding fourteen years, and not "less than five years (27 & 28 Vict. "c. 47), or to be imprisoned for "any term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment." (Former provision, 7 Will. 4 & 1 Vict. c. 87, s. 5.)

By s. 41, "if, upon the trial of "any person upon any indictment "for robbery, it shall appear to the "jury upon the evidence that the "defendant did not commit the "crime of robbery, but that he did " commit an assault with intent to "rob, the defendant shall not, by "reason thereof, be entitled to be "acquitted, but the jury shall be at "liberty to return as their verdict "that the defendant is guilty of an "assault with intent to rob; and "thereupon such defendant shall be

"manner as if he had been convict-"ed upon an indictment for felonious, "ly assaulting with intent to rob; "and no person so tried as is herein "lastly mentioned shall be liable to "be afterwards prosecuted for an " assualt with intent to commit the "robbery for which he was so "tried." (Former provision, 14 & 15 Vict. c. 100, s. 11.)

Before the Enactment. —The following decisions took place under 7 Will. 4 & 1 Vict. c. 85, s. 11, which was repealed by 14 & 15 Vict. c. 100, s. 10; and by that section it was enacted, "that on the trial of "an indictment for robbery, the "jury may convict of an assault "with intent to rob, and, on con-"viction, the prisoner is liable to "the same punishment as upon an "indictment for feloniously assault-"ing with intent to rob."

A. being indicted for a robbery, the jury acquitted him of the robbery, and found him guilty of a common assault only:—Held, such conviction right. Reg. v. Birch, 1 Den. C. C. 185; 2 C. & K. 193.

The prisoners were indicted for robbery; the jury acquitted them of the robbery, but found that the prisoners were guilty of assaulting and beating the prosecutor with intent to rob him:—Held, that the jury was not justified in finding this verdict, and that the judgment must be arrested, as the assaults contemplated by 7 Will. 4 & 1 Vict. c. 85, s. 11, were misdemeanors, and as the jury had found the prisoners guilty of a felony, which was not in the indictment. Reg. v.Reid, T. & M. 431; 2 Den. C. C. 89; 15 Jur. 181; 20 L. J., M. C. 67.

Burglariously breaking and entering a dwelling-house, with intent to commit a rape, was not a crime which included an assault; and therefore, in an indictment for such a burglary, the prisoner could not be convicted of an assault. Reg. v. "liable to be punished in the same | Watkins, Car. & M. 264; 2 M. C. C. 217; S. P., Reg v. Crumpton, Car. & M. 597—Patteson.

If, on an indictment for a robbery with violence, the robbery was not proved, the prisoner could not be found guilty of the assault only, under 7 Will. 4 & 1 Vict. c. 85, s. 11, unless it appeared that such assault was committed in the progress of something, which, when completed, would be, and with intent to commit, a felony. Reg. v. Greenwood, 2 C. & K. 339—Wightman.

By 7 & 8 Geo. 4, c. 27, the 23 Hen. 8, c. 1, and 3 Will. & M. c. 9, and 1 Edw. 6, c. 12, so far as related to this subject were repealed, and 24 & 25 Vict. c. 95, repeals 7 & 8 Geo. 4, c. 29, ss. 6, 7, and 7 Will.

4 & 1 Vict. c. 87.

See C. J. Tindal's Charge, 5 C. & P. 267, n.

If a robber takes a purse of money from a person and restores it to him immediately, saying, "If you value your purse take it back and give me the contents," but is apprehended before the money is delivered to him, yet the crime is com-Rex v. Peat, 1 Leach, C. C. pleted. 228; 2 East P. C. 557.

Taking money from a woman at the time of an attempt to commit a rape amounts to robbery, although there was no demand of money made by the prisoner, and it was clearly his original intent only to commit a rape. Rex v. Blackham,

2 East, P. C. 711.

Where money was given to one of the mob during the riots in London, in 1780, upon knocking at the prosecutor's door in a menacing manner:-Held, that it was rob-Rex v. Taplin, 2 East, P. C. bery. 712.

Where the prisoners threatened to bring a mob from Birmingham (then in a state of riot and disturbance), and burn the prosecutor's house if he did not give them money, and he did so under fear of that threat:—Held, a robbery. Rex v. Astley, 2 East, P. C. 729; Rex v. Brown, 2 East, P. C. 731.

So it was held in the case of a threat to tear down corn, and level the house. Rex v. Simons, 2 East, P. C. 731.

If a person by force or threats compels another to give him goods, and by way of colour obliges him to take, or if he offers less than the value, it is robbery. Rex v. Simons, 2 East, P. C. 712; S. P., Rew v. Spencer, 2 East, P. C. 712.

Where persons under pretence of an auction got a woman into a house, and compelled ber, by threats of carrying her before a magistrate and to prison for not paying for a lot pretended to have been bid for by her, to pay them one shilling through fear of prison, and for the purpose of obtaining her liberation, but without any fear of any other personal violence:-Held, not robbery, but only duress. Rex v. Wood, 2 East, P. C. 732.

To obtain money by a threat to send for a constable, and take the party before a magistrate, and thence to prison, is not robbery; for the threat of legal imprisonment ought not so to alarm any mind as to induce the person to part with his property. Rex v. Knewland, 2 Leach, C. C. 721; 2

East, P. C. 732.

If the property is not taken by violence, nor parted with through fear, it is no robbery; though there was sufficient legal and reasonable ground for fear, as upon a threat to charge one with an unnatural crime. Rex v. Reane, 2 East, P. C. 734; 2 Leach, C. C. 616.

Suddenly snatching a bundle from the hands of a boy as the prisoner ran past him, is only larceny, as there was not a sufficient degree of force and terror to constitute rob-Rex v. Macaulay, 1 Leach, C. C. 287; S. P., Rex v. Robins, 1 Leach, C. C. 290, n.

But snatching an article from a

man will constitute robbery, if it is so attached to his person or clothes as to afford resistance. Rex v. Mason, R. & R. C. C. 419.

To force an ear-ring from the ear of a lady, with a felonious intent to steal it, is a sufficient degree of violence to constitute robbery; and to remove it from the ear to the curls of her hair, where it accidentally remained, is a sufficient carrying away. Rex v. Lapier, 1 Leach, C. C. 320; 2 East, P. C. 557, 708.

To snatch a diamond pin from the head-dress of a lady, with such force as to remove it with part of the hair from the place in which it was fixed, is a sufficient violence to constitute robbery. Rex v. Moore. 1 Leach, C. C. 335.

Snatching property from the hand of another is not sufficient force to constitute highway robbery. v. Baker, 1 Leach, C. C. 290; 2 East, P. C. 702.

To constitute the crime of highway robbery, the force used must be force with intent to overpower the party, and prevent his resistance; and if the force used is not with that intent, but only to get possession of the property of the party attacked, it is not highway robbery. Rex v. Gnosil, 1 C. & P. 304—Garrow.

The crime of robbery may be committed by obtaining money from a man, by threatening to charge him with having been guilty of sodomitical practices. Rex v. Jones, 1 Leach, C. C. 139.

To obtain money from a person against his will, by threatening to carry him before a magistrate, and to accuse him of unnatural practices, amounts to robbery, though no actual or personal violence is used. Rex v. Donnally, 1 Leach, C. C. 193; 2 East, P. C. 713, 783.

It is equally a robbery to extort money from a person, by threatening to accuse him of an unnatural crime, whether the party so threat- and service, upon a charge of so-

ened has been guilty of such crime or not. Rex v. Gardner, 1 C. & P. 479—Littledale.

If a man obtains property from another by accusing him of having been guilty of an unnatural crime, it will amount to robbery, although the party was under no apprehension of personal danger, and felt no other fear than that of losing his character. Rex v. Hickman, 1 Leach, C. C. 278; 2 East, P. C.

Semble, it is still robbery to extort money by threatening a charge of sodomy. Reg. v. Stringer, 2 M. C. C. 261.

To constitute robbery by taking money from another upon a threat of charging him with an unnatural crime, the money must be taken immediately upon the threat made, and not after the parties have separated, and there has been time for the prosecutor to deliberate and procure assistance. Rex v. Jackson, 1 East, P. C. Add. xxi; 1 Leach, C. C. 193, n.; 2 Leach, C. C. 618, n.

Parting with property upon the charge of an unnatural crime will not make the taking a robbery, if it is parted with, not from the fear of loss of character, but for the purpose of prosecuting. Rex v. Fuller, R. & R. C. C. 408.

Where money was obtained by calling a man a sodomite and threatening him, but the money was parted with by the prosecutor, not so much from fear of losing his character as from fear of losing his place:—Held, that it was sufficient to constitute a robbery. Rex v. Elmstead, 2 Russ. C. & M. 128.

Obtaining money by threatening to charge a man with an unnatural crime, and carry him before a magistrate, is robbery, if there is any constraint upon his person. Rex v. Cannon, R. & R. C. C. 146.

The parting with money or goods, through fear of loss of character domitical practices, is sufficient to constitute robbery, although the party has no fear of being taken into custody, nor any dread of punishment. Rex v. Egerton, R. & R. C. C. 375.

Obtaining money from a woman by threatening to accuse her husband of an indecent assault is not robbery. Rex v. Edwards, 5 C. & P. 518; S. C. nom. Rex v. Edward, 1 M. & Rob. 257—Littledale.

If a bailiff handcuffs a prisoner, under pretence of carrying him to prison with greater safety, and by means of this violence extorts money, he is guilty of robbery. Rex v. Gascoigne, 1 Leach, C. C. 280; 2 East, P. C. 709.

If a gang of poachers attacks a gamekeeper and leaves him senseless on the ground, and one of them returns and steals his money:— Held, that one only can be convicted of the robbery, as it was not in pursuance of any common intent. Rex v. Hawkins, 3 C. & P. 392—Park.

A. had set wires in which game was caught; B., a gamekeeper, found them and took them, with the game caught in them, for the use of the lord of the manor: A. demanded them with menaces, and B. gave them up. The jury found that A. acted under a bona fide impression that the wires and game were his property:—Held, that it was no robbery. Rea v. Hall, 3 C. & P. 409—Vaughan.

A. and B. were walking together, B. carrying A.'s bundle, when C. and D. came up and assaulted A.: B. threw down the bundle, and ran to the assistance of A., when C. took it up and made off with it. C. and D. were indicted for robbery, A. being the prosecutor:—Held, that they could not be convicted of the robbery, but only of simple larceny, as the thing stolen was not in the personal custody of

A. Rex v. Fallows, 5 C. & P. 508 Vaughan.

A. was attacked by robbers, who, after using very great violence towards him, took from him a piece of paper, on which was written a memorandum respecting some money that a person owed him:—Held, robbery. Rex v. Bingley, 5 C. & P. 602—Gurney.

A. asked B. what o'clock it was, and B. took out his watch to tell him, holding his watch loosely in both his hands. A. caught hold of the ribbon and key attached to the watch and snatched it from B., and made off with it:—Held, no robbery, but a stealing from the person. Reg. v. Hughes, 2 C. & K. 214—Patteson.

In order to constitute the offence of robbery, not only force must be employed by the party charged therewith, but it is necessary to shew that that force was used with the intent to accomplish the robbery. *Reg.* v. *Edwards*, 1 Cox, C. C. 32—Alderson.

When it appeared that a wound had been accidentally inflicted on the hand of the prosecutrix:—Held, that an indictment for robbery was not sustainable. *Ib*.

A creditor having violently assaulted his debtor, and so forced him to give him a cheque in part payment, and having then again assaulted him, in order to force him to give him money in payment of the debt:—Held, that as there was no felonious intent, he could not properly be convicted of robbery. Rey. v. Hemmings, 4 F. & F. 50—Erle.

# 2. Garotting.

By 24 & 25 Viet. c. 100, s. 21, "whosoever shall, by any means "whatsoever, attempt to choke, suffocate or strangle any other person, or shall, by any means calculated to choke, suffocate or strangle, attempt to render any "other person insensible, uncon-"scious or incapable of resistance, "with intent in any of such cases "thereby to enable himself or any "other person to commit, or with "intent in any of such cases there-"by to assist any other person in "committing, any indictable of-"fence, shall be guilty of felony, "and, being convicted thereof, shall " be liable, at the discretion of the "court, to be kept in penal servitude "for life, or for any term not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour."

#### 3. Indictment.

An indictment for a highway robbery must state that the assault was feloniously made with an offensive weapon. Rex v. Pelfryman, 2 Leach, C. C. 563; 2 East, P. C. 783.

An indictment for robbery need not have the word "violently;" but it must appear upon the whole statement that violence was used. Rex v. Smith, 2 East, P. C. 784.

A servant was set out by his master to receive money from his master's customers, and having received the money, he was robbed of it on his way home. Semble, that an indictment for this robbery, in which the money was laid to be the property of his master, could not be supported, as the money had never been in the possession of the mas-Reg. v. Rudick, 8 C. & P. 237—Alderson.

And when, in such a case, the objection was taken during the trial, the judge directed the jury to be discharged, and a new indictment to be sent to the grand jury, containing a count laying the property in the servant. Ib.

A. and B. were indicted for the offence of robbery. The jury found that A. took the property of the prosecutor from him by violence, and that B. was present during part | time, A. of his money, B. of his

of the time, and that he was a party, with A., to a design to bring the prosecutor to the place where he was robbed by A., and to obtain property from him on a false charge of an unnatural crime, but that he was not aiding or assisting in, or privy to the taking of, the property from the prosecutor by violence: Held, that, in order to convict B., the indictment should have been framed on 7 Will. 4 & 1 Vict. c. 87, s. 4; and that he could not, since the passing of the statute, under the circumstances of the case, be convicted on an indictment charging the offence of robbery. Reg. v. Taunton, 9 C. & P. 309; 2 M. C. C. 118.

An indictment for a robbery on an unmarried woman in her maiden name is good, although she marries before the indictment is found. Rex v. Turner, 1 Leach, C. C. 536.

Where several are indicted for robbery, it is not necessary to aver that they were together, but where one only of the party is indicted, it ought to be averred that he committed the offence "together with others." Raffety's case, 2 Lewin, C. C. 271—Patteson. See Reg. v. Ramsden, 1 Cox, C. C. 37—per Maule, contrà.

An indictment for robbery, which charges the prisoners with having assaulted G. P. and H. P., and stolen 2s. from G. P. and 1s. from H. P., is correct, if the robbing of G. P. and H. P. was all one act; and, if it were so, the counsel for the prosecution will not be put to elect. Reg. v. Giddins, Car. & M. 634—Tindal.

#### 4. Evidence.

On an indictment for robbery, the declaration in articulo mortis of the party robbed is not admissible in evidence. Rex v. Lloyd, 4 C. & P. 233—Bolland.

A. and B., when riding in a gig together, were robbed at the same

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watch, and violence used towards both. There was an indictment for the robbing of A., and another indictment for the robbing of B.:

—Held, that, on the trial of the first indictment, evidence might be given of the fact of the loss of the watch by B., and that it was found on one of the prisoners, but that no evidence ought to be given of any violence offered to B. by the robbers. Rex v. Rooney, 7 C. & P. 517—Littledale.

If persons who had formed part of a mob obtain money from a party by advising him to give money to the mob, and are indicted for this as a robbery, the prosecutor, to shew that this was not bonâ fide advice, may give evidence of demands of money made by the same mob at other places, before or afterwards in the course of the same day, if any of the prisoners were present on those occasions. Rex v. Winkworth, 4 C. & P. 444—Parke.

An indictment for robbery charged that A. and B. together assaulted C., and robbed him of his watch. At the trial C. did not appear, and there was no evidence of the felony, but a witness saw C. on the ground on the night in question, and several persons around him abusing him, and this witness saw A. strike C. The jury convicted A. of an assault, but said that they were not satisfied that A. had any intent to rob C.:—Held, that the conviction was right. Reg. v. Birch, 2 C. & K. 193; 1 Den. C. C. 185.

Evidence of footmarks is, per se, insufficient evidence on which to convict of a robbery. Reg. v. Britton, 1 F. & F. 354—Watson.

A., B. and C. were indicted for having robbed and beaten D. A. knocked D. down, and it was imputed that B. and C. stole the property from his pockets:—Held, that if B. and C. stole the property, and A. did not participate in the robbery, A. could not be convicted of an assault, as the assault committed

by him was an independent assault unconnected with the robbery; but that, if the jury thought that D. was not robbed by any of the prisoners, but had been assaulted by all of them, they might find all guilty of the assault. Reg. v. Barnett, 2 C. & K. 594; 3 Cox, C. C. 432—Cresswell.

In a case of robbery from the person, where the property alleged to have been stolen has not been seen or known to be safe immediately before the robbery, if there is any evidence on the subject, it is for the jury to say whether the property was really in a position to be stolen as alleged. Reg. v. Wilkins, 10 Cox, C. C. 363—Chambers, C. S.

#### 5. Assault with Intent to Rob.

By 24 & 25 Vict. c. 96, s. 42, "whosoever shall assault any per-"son, with intent to rob, shall be "guilty of felony, and, being con-"victed thereof, shall (save and ex-"cept in the cases where a greater "punishment is provided by this "aet) be liable, at the discretion of "the court, to be kept in penal serv-"itude for the term of five years "(27 & 28 Viet. c. 47), or to be "imprisoned for any term not ex-"ceeding two years, with or with-"out hard labour, and with or "without solitary confinement." Former provisions, 7 & 8 Geo. 4, c. 29, s. 6; 7 Will. 4 & 1 Vict. c. 87, s. 6.)

By s. 43, "whosoever shall, being "armed with any offensive weapon "or instrument, rob, or assault "with intent to rob, any person, or shall, together with one or more other person or persons, rob, or assault with intent to rob, any person, or shall rob any person, and at the time of or immediately be fore or immediately after such "robbery, shall wound, beat, strike, or use any other personal violence to any person, shall be guilty of felony, and, being convicted there-

"of, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement." (Former provision, 7 Will. 4 & 1 Vict. c. 87, s. 3.)

A. was decoyed into a house and chained down to a seat, and compelled to write an order for the payment of money and an order for the delivery of deeds. The paper on which he wrote remained in his hand half an hour, but he was chained all the time:—Held, that this was not an assault with intent to rob within 7 & 8 Geo. 4, c. 29, s. 6. Rex v. Edwards, 6 C. & P. 521—Patteson.

It must be proved that the assault was made on the person intended to be robbed. Rex v. Thomas, 1 Leach, C. C. 330; 1 East, P. C. 417. And see Rex v. Trusty, 1 East. P. C. 418.

Therefore an assault on a postboy, with intent to rob the traveller, is not sufficient. *Ib*.

There must be a demand of money or other property, as well as an assault, to constitute the offence. *Rex* v. *Parfait*, 1 Leach, C. C. 19; 1 East, P. C. 416.

A. and B., on a concerted plan to obtain money from C., threatened to accuse him of an indecent exposure of his person, and A. (B. being present) seized C. by the collar, and A. and C. went to a station-house, and there A. made the threatened charge:—Held, that, on these facts, A. and B. might be convicted of an assault with intent to rob C., although the threats used did not come within the terms of 7 & 8 Geo. 4, c. 29, ss. 7, 9, or of 7 Will. 4 & 1 Vict. c. 87, s. 4. Reg. v. Stringer, 1 C. & K. 188.

A., at C. fair, came up to B., the prosecutor's father (being a stranger to him), and gave him eleven

sovereigns to buy him a horse, and B. put them into his pocket. fused to give the eleven sovereigns back, and A. and the prisoner, who was in his company, assaulted him, but could not get the money from On the next day the prisoner asked B. for the eleven sovereigns; and, at L. fair on a subsequent day, the prisoner, having seen the prosecutor receive seven sovereigns, demanded the eleven sovereigns of him, and then knocked him down, and tried to get the seven sovereigns out of his pocket:—Held, that there was such a semblance of a claim of right, that this was not an assault with intent to rob. Reg. v. Boden, C. & K. 395—Parke.

Assaulting and threatening to charge with an infamous crime with intent to extort money, was an assault with intent to rob under 7 Will. 4 & 1 Vict. c. 87, s. 3. Reg. v. Stringer, 2 M. C. C. 261.

Where prisoners were indicted for robbery under aggravated circumstances, it is competent for the jury, under 14 & 15 Vict. c. 100, s. 11, to find the prisoners guilty of an aggravated assault with intent to rob, the assault following the nature of the robbery charged; and prisoners found guilty of such aggravated assaults were liable totransportation, under 7 Will. 4 & 1 Vict. c. 87, ss. 3, 10. Reg. v. Mitchell, 3 C. & K. 181; 16 Jur. 506; 21 L. J., M. C. 135; 2 Den. C. C. 468; 5 Cox, C. C. 541.

Indictment.]—An indictment for an assault with intent to rob, which charges that the prisoner in and upon R. B. feloniously did make an assault, "with intent the monies, goods and chattels of R. B., from the person and against the will of R. B., then and there feloniously and violently to rob, steal, take and carry away, against the form of the statute," is good. Reg. v. Huxley, Car. & M. 596—Patteson. A. was indicted in one count for

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feloniously assaulting the prosecutor with intent to steal his monies and goods, and in another count for the misdemeanor of attempting to steal the same monies and goods. was found guilty on the first count; whereupon his counsel moved in arrest of judgment, on the ground that the indictment was bad, by reason of a misjoinder of counts:— Held, that the objection was unfounded, and that A. was properly convicted. Reg. v. Furguson, Dears. C. C. 427; 1 Jur., N. S. 73; 24 L. J., M. C. 61.

An indictment charged that A. B., in and upon C. D., feloniously did make an assault, and him the said C. D. in bodily fear and danger of his life did put, and two pieces of current silver coin, from the person and against the will of the said C. D. feloniously and violently did rob, steal, take and carry away; and that A. B. immediately before, at the time of and immediately after such robbery as aforesaid, did feloniously beat and strike and use other personal violence to said C. D. contra formam statuti. jury found A. B. guilty of assaulting and beating C. D., with intent to rob him:—Held, that, as the offence of assaulting with intent to rob was not expressly stated in the indictment, the prisoner, at common law, could not be convicted; and secondly, as an assault with intent to rob was made felony by statute, the jury was not at liberty, under 7 Will. 4 & 1 Vict. c. 85, s. 11, to find the prisoner guilty of that felonious assault. Reg. v. Reid, 5 Cox, C. C. 104; 2 Den. C. C. 89.

# 6. Punishment of Whipping.

By 26 & 27 Vict. c. 44, s. 1, "where any person is convicted cf "a crime under s. 43 of 24 & 25 " Vict. c. 96, or under s. 21 of 24 & "25 Vict. c. 100, the court before "whom he is convicted may, in ad-"dition to the punishment awarded

"thereof, direct that the offender, "if a male, be once or twice or "thrice privately whipped, subject "to the following provisions; (1), "that in the case of an offender "whose age does not exceed sixteen "years, the number of strokes at "each such whipping do not exceed "twenty-five, and the instrument "used shall be a birch rod; (2), "that in the case of any other male "offender, the number of strokes do "not exceed fifty at each such "whipping; (3), that in each case "the court in its sentence shall spec-"ify the number of strokes to be in-"flicted and the instrument to be "used: provided, that in no case "shall such whipping take place af-"ter the expiration of six months "from the passing of the sentence; "provided also, that every such "whipping, to be inflicted on any "person sentenced to penal servi-"tude, shall be inflicted on him be-"fore he shall be removed to a con-"vict prison, with a view to his un-"dergoing his sentence of penal " servitude."

## XXXIV. SANITARY LAWS.

Quarantine. —Disobeying the orders of the Privy Council with respect to the performance of quarantine is an offence at common law. Rex v. Harris, 2 Leach, C. C. 549: 4 T. R. 202.

Infection. —A person may be indicted for unlawfully and injuriously carrying a child infected with the small-pox along a public highway, in which persons are passing, and near to the habitations of the king's subjects. Rex v. Vantandillo, 4 M. & S. 73.

It is an indictable offence in an apothecary unlawfully and injuriously to inoculate children with the small-pox, and, while they are "by the said sections, or any part | sick of it, unlawfully and injuriously to cause them to be carried along a public street. Rex v. Burnett, 4 M. & S. 272.

To bring a borse infected with the glanders into a public place, to the danger of infecting the Queen's subjects, is a misdemeanor at common law, and after verdict an indictment for that offence is good without an averment that the defendant knew that the disease was communicable to men. Reg. v. Henson, Dears. C. C. 24.

#### XXXV. SEA, OFFENCES AT.

7 Geo. 4. c. 38; 7 & 8 Geo. 4, c. 28, s. 12; 17 & 18 Viet. c. 104, ss. 267-270, and 18 & 19 Vict. c. 91, s. 21, "provide for the prosecution " of offences committed on the high " seas and abroad."

An English ship upon the high seas is to be considered as part of the territory of England; and therefore a foreigner, who whilst on board such ship commits an offence against the English laws, is amenable to those laws; and it makes no difference whether he has gone on board voluntarily, or has been taken and detained there against his will. Reg. v. Lopez; Reg. v. Sattler, Dears. & B. C. C. 525; 4 Jur., N. S. 98; 27 L. J., M. C. 48; 7 Cox, C. C. 431.

A person is found within the jurisdiction of a court of justice, within the meaning of the 18 & 19 Vict. c. 91, s. 21, when he is actually present there, whether he has come within such jurisdiction voluntarily, or has been brought there against his will. Ib.

The defendant was convicted on an indictment charging him with assaulting the prosecutors on the high seas, and imprisoning and detaining them. They were Chilian subjects, and had been ordered by the government of Chili to be banished from that country to England. The defendant being master of an English merchant vessel lying in R. 208; 11 Cox, C. C. 198.

territorial the waters of Chili, near Valparaiso, contracted with the Chilian government to take the prosecutors from Valparaiso to Liverpool; and they were accordingly brought on board his vessel by the officers of the government, and were carried by the defendant to Liverpool under his contract:—Held, that although the conviction could not be supported for the assault and imprisonment in the Chilian waters, it must be sustained for that which was done out of the Chilian territory, and that although the defendant was justified in receiving the prosecutors on board his vessel in Chili, yet that justification ceased when he passed the line of Chilian jurisdiction, and the detention of the prisoners and conveying them to Liverpool was a wrong intentionally planned and executed in pursuance of the contract, amounting to a false imprisonment, and triable by English law. Reg. v. Lesley, Bell, C. C. 220; 8 Cox, C. C. 269; 6 Jur., N. S. 202; 29 L. J., M. C. 97; 8 W. R. 220; 1 L. T., N. S. 452.

In an indictment preferred at the assizes for a felony committed on the high seas, it is sufficient to allege that the offence was committed on the high seas, without also averring that the offence was committed within the jurisdiction of the Admiralty. Reg. v. Jones, 2 C. & K. 165; 1 Den. C. C. 191.

Admiralty Jurisdiction. ] — The criminal jurisdiction of the Admiralty of England extends over British ships, not only on the high seas but also in rivers, below the bridges, where the tide ebbs and flows, and where great ships go, though at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction, if invoked. Reg. v. Anderson, 38 L. J., M. C. 12; 1 L. R., C. C. 161; 19 L. T., N.S. 400; 17 W.

A foreigner was convicted of manslaughter at the Central Criminal Court, committed on board a British vessel, in the river Garonne, within the boundaries of the French Empire, about thirty-five miles from the sea, and at a spot about 300 yards from the nearest shore, within the ebb and flow of the tide:—Held, right, inasmuch as it was a place within the jurisdiction of the Admiralty of England, which that court had jurisdiction to try under 4 & 5 Will. 4, c. 36, s. 22. ΙĎ.

Offences by British Subjects on Board Ships.]—By 30 & 31 Vict. c. 124, the Merchant Shipping Act, 1867, s. 11, "if any British subject "commits any crime or offence on "hoard any British ship or on board "any foreign ship to which he does "not belong, any court of justice "in her Majesty's dominions which "would have cognizance of such "crime or offence, if committed on "board a British ship within the "limits of the ordinary jurisdiction " of such court, shall have jurisdic-"tion to hear and determine the "case, as if the said crime or offence "had been committed as last afore-" said."

To prove that a ship is a British ship, it is not necessary to produce the register or a copy thereof; it is sufficient to show orally that she belongs to British owners, and carries the British flag. Reg. v. Allen, 10 Cox, C. C. 405—Russell Gurney, Recorder.

Oral testimony as to the position of a ship at a given time is better evidence than the production of the

log-book. Ib.

#### XXXVI. SEDITION.

An indictment for sedition alleged "that the defendant, amongst other words and matter, uttered

and then set out several sentences. as though they had been uttered continuously. The evidence shewed that they had not been so uttered, but that the sentences had been selected from different parts of the speech, other matter intervening between them:—Held, that there was no variance, and that if any portions of the speech omitted varied or controlled the sense of those set out, the onus was upon the defendant to show it. Reg. v. Crowe, 3 Cox, C. C. 123—Platt.

A prisoner indicted under 11 & 12 Vict. c. 12, may, after demurring to the indictment, if his demurrer is overruled, plead over to the felony. Reg. v. Duffy, 4 Cox, C. But see Reg. v. Hendy, 4 C. 24. Cox, C. C. 243, and Reg. v. Fader-

man, 4 Cox, C. C. 385.

Where an indictment containing counts for sedition, attending a seditious meeting and a riot, the court refused to quash the indictment, or compel the counsel for the prosecution to elect, although the judgment on the last count might be different from that upon the others. Reg. v.Fussell, 3 Cox, C. C. 291—Wilde, Parke and Maule.

The words set out in an indictment for sedition were these, "If the Queen neglects to recognize the people, then the people must neglect to recognize the Queen." It was proved that the word "forget" was used in both instances, and not " neglect ":—Held, to be a fatal variance as far as that sentence was concerned, and that the passage must be struck out.

#### XXXVII. SEPULTURE.

#### 1. Desecration.

(See the Anatomy Act, 2 & 3 Will. 4, c. 75.)

Removing Dead Bodies.]—Taking up dead bodies, even though for the words and matter following," | the purpose of dissection, is an indictable offence. *Reg.* v. *Lynn*, 2 T. R. 733; 1 Leach, C. C. 497.

Selling the dead body of a person capitally convicted for dissection, where dissection was no part of the sentence, was a misdemeanor at common law; and in order to support an indictment for such offence, it was not necessary that there should be direct evidence that the defendant sold the body for lucre and gain, and for the purpose of being dissected. Rex v. Cundick, D. & R. N. P. C. 13—Graham.

It is an indictable offence against decency to take a person's dead body with intent to sell or dispose of it for gain and profit. Rex v. Gilles, R. & R. C. C. 336, n. b.—Bayley. And see Rex v. Duffin, R. & R. C. C. 365.

A master of a workhouse, after shewing the bodies of deceased paupers in coffins to their relatives, caused the relatives to follow other coffins to the graves, and the appearance of a funeral to be gone through. The relatives had not required that the bodies should be interred without anatomical examination, according to 2 & 3 Will. 4, c. 75, s. 7. The master of the workhouse then sent the bodies to Guy's Hospital for dissection, and received therefor sums of money in proportion to the number of bodies sent. After dissection the bodies were The jury found that the buried. master of the workhouse had caused the appearance of funerals to be gone through, with a view to prevent the relatives requiring the bodies to be interred without anatomical examination: -Held, that an indictment charging the master of the workhouse, in one count, with selling the bodies, in another with taking away the bodies for gain to delay the burial with intent to have them dissected, and in a third with intent to sell and dispose of them, could not be sustained, as the master of the workhouse had lawful possession of the bodies within 2 & 3 Will.

4, c. 75, s. 7, and the relatives had made no request that the bodies should be interred without anatomical examination. Reg. v. Feist, 8 Cox, C. C. 18; Dears. & B. C. C. 590; 4 Jur., N. S. 541; 27 L. J., M. C. 64.

It is a misdemeanor at common law to remove, without lawful authority, a corpse from a grave in a burying-ground belonging to a congregation of Protestant dissenters, and it is no defence to such a charge that the motive of the person removing the body was pious and laudable. Reg. v. Sharpe, Dears. & B. C. C. 160; 3 Jur., N. S. 192; 26 L. J., M. C. 47; 7 Cox, C. C. 214.

#### XXXVIII. SODOMY AND BESTIAL-ITY.

By 24 & 25 Vict. c. 100, s. 61, "whosoever shall be convicted of "the abominable crime of buggery, "committed either with mankind "or with any animal, shall be lia-"able, at the discretion of the court, "to be kept in penal servitude for "life, or for any term not less than "ten years." (Former provision, 9 Geo. 4, c. 15, s. 15.)

By s. 62, "whosoever shall at-"tempt to commit the said abomi-"nable crime, or shall be guilty of "any assault with intent to commit "the same, or of any indecent as-"sault upon any male person, shall "be guilty of a misdemeanor, and, "being convicted thereof, shall be "liable, at the discretion of the "court, to be kept in penal servi-"tude for any term not exceeding "ten years, and not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not "exceeding two years, with or with-"out hard labour."

By s. 63, "whenever, upon the "trial, it may be necessary to prove carnal knowledge, it shall not be "necessary to prove the actual emis-

"sion of seed in order to constitute "a carnal knowledge, but the car" nal knowledge shall be deemed "complete upon proof of penetration "only." (Previous provision, 9 Geo. 4, c. 31, s. 18.)

By 9 Geo. 4, c. 31, 25 Hen. 8, c. 6, and 5 Eliz. c. 17, were repealed, and by 24 & 25 Vict. c. 95, 9 Geo. 4, c. 31, ss. 15, 18, and 7 Will. 4 &

1 Vict. c. 85, s. 1, are repealed.
Proof of injectio seminis, as well as penetration, was essential on an indictment for sodomy. Rex v. Duffin, 1 East, P. C. 437; R. & R. C. C. 365.

But since 9 Geo. 4, c. 31, s. 18, the crime is complete, if the jury is satisfied that penetration took place. Rex v. Reekspear, 1 M. C. C. 342; Rex v. Cozins, 6 C. & P. 351.

It is not allowable to shew that the prisoner has a general disposition, or a natural inclination to commit the same kind of offence as that charged against him. Rex v. Cole, 1 Russ. C. & M. 939.

A married woman who consents to her husband's committing an unnatural offence with her, is an accomplice in the felony, and, as such, her evidence requires confirmation, although consent or non-consent is quite immaterial to the offence. Reg. v. Jellyman, 8 C. & P. 604—Patteson.

An indictment for bestiality, which describes the animal as a certain animal called a bitch, is sufficiently certain, although the females of foxes and some other animals are called bitches, as well as the female of the dog. Rex v. Allen, 1 C. & K. 495—Tindal.

To constitute the offence of sodomy, the act must be in that part where sodomy is usually committed; for, the act in a child's mouth does not constitute the offence. Rex v. Jacobs, R. & R. C. C. 331.

An unnatural connexion with an animal of the fowl kind was not sodomy, before 9 Geo. 4, c. 31, s. 15, a

fowl not coming under the term "beast": [the words of the 9 Geo. 4, c. 31, s. 15, were "any animal"]: and it was agreed clearly not to be sodomy when the fowl was so small that its private parts would not admit those of a man, and were torn in the attempt. Rex v. Mulreaty, 1 Russ. C. & M. 938.

On an indictment against a prisoner charging him with the capital offence of bestiality, the jury could not find him guilty of an assault under 7 Will. 4 & 1 Vict. c. 85, s. 11; but if they acquitted him of the capital charge he might be detained in custody, and indicted for a misdemeanor, in attempting to commit a felony. Reg. v. Eaton, 8 C. & P. 417—Vaughan, Bolland, and Patteson.

Indictment against two, charging that they, being persons of wicked and unnatural dispositions, did, in an open and a public place, unlawfully meet together, with the intent of committing with each other, openly, lewdly, and indecently in that public place, divers nasty, wicked, filthy, lewd, beastly, unnatural, and sodomitical practices, and then and there unlawfully, wickedly, openly, lewdly, and indecently did commit with other, in the sight and view of divers of the liege subjects, in the said public place there passing, divers such practices as aforesaid, is bad, in arrest of judgment, for want of a real certainty. Reg. v. Rowed, 2 G. & D. 518; 3 Q. B. 180; 6 Jur. 396.

Where an adult and a boy of twelve years of age commit an unnatural offence, the adult being the pathic may be convicted. Reg. v. Allen, 1 Den. C. C. 364; T. & M. 55; 2 C. & K. 869; 13 Jur. 108; 18 L. J., M. C. 72; 3 Cox, C. C. 270.

Where a long period of time, nearly two years, have elapsed from the time of committing the offence of bestiality before complaint is made to the justices, the case will

not be permitted to go to the jury.

Reg. v. Robins, 1 Cox, C. C. 114—

Alderson.

# XXXIX. SUICIDES AND SELF-MAIMING.

An attempt to commit suicide is a misdemeanor at common law. Reg. v. Doody, 6 Cox, C. C. 463—

Wightman.

The question for the jury is, whether the prisoner had a mind capable of contemplating the act charged, and whether he did, in fact, intend to take away his life. *Ib*.

The mere fact of drunkenness is no excuse for the crime; but it is a material fact for the jury to consider, before coming to the conclusion that the prisoner really intended to

destroy his life. Ib.

Suicide is not murder within 24 & 25 Vict. c. 100, ss. 11—15, and therefore attempting to commit suicide is a misdemeanor triable at quarter sessions. Reg. v. Burgess, L. & C. 258; 9 Cox, C. C. 247; 32 L. J., M. C. 55; 11 W. R. 96; 7 L. T., N. S. 472.

Indictment for murder. Defence, that the deceased committed suicide. Verdict guilty, the jury adding that they believed the act was committed without premeditation. The judge refused to receive such a verdict, and directed the jury to say guilty or not guilty. Reg. v. Maloney, 9 Cox, C. C. 6—Byles.

A party who maims himself, or procures another to do it for him, so that he may be better enabled to beg, or to prevent himself from being pressed for a soldier, is liable to fine or imprisonment at common law. Rew v. Wright, 1 East, P. C.

396.

So is the party by whom it is effected at the other's desire. Ib.

# XL. THREATENING LETTERS AND MENACES.

1. Statutes, 457.

2. Demanding Money or Valuables with Menaces, 457.

3. Threatening to accuse of Crime, or with Intent to Extort, 460.

 Letters threatening to Burn or Destroy, 463.

5. Letters threatening to Murder, 464.

6. Threatening to sue for Penalties, 464.

7. Threatening to Publish Defamatory Matter, 464.

8. Persons Indictable, 465.

9. Indictment, 465.

10. Evidence, 466.

#### 1. Statutes.

4 Geo. 4, c. 54, repealed so much of the Black Act, 9 Geo. 1, c. 22, and so much of 27 Geo. 2, c. 15, and of 30 Geo. 2, c. 24, as related to this subject; and by 7 & 8 Geo. 4, c. 27, 4 Geo. 4, c. 54, was repealed so far as it related to letters threatening to kill, murder, burn, and destroy, and to accessories to such offences, and rescue of such offenders; 24 & 25 Vict. c. 95 repeals 4 Geo. 4, c. 54; 7 & 8 Geo. 4, c. 29; 7 Will. 4 & 1 Vict. c. 87, and 10 & 11 Vict. c. 66; 24 & 25 Vict. c. 96, is the statute in force on the subject.

# 2. Demanding Money or Valuables, with Menaces.

By 24 & 25 Viet. c. 96, s. 44, "whosoever shall send, deliver, or "utter, or directly or indirectly "cause to be received, knowing the "contents thereof, any letter or " writing, demanding of any person, "with menaces, and without any " reasonable or probable cause, any " property, chattel, money, valuable "security, or other valuable thing, " shall be guilty of felony, and, being "convicted thereof, shall be liable,, "at the discretion of the court, to " be kept in penal servitude for life, " or for any term not less than five " years (27 & 28 Viet. c. 47), or to " be imprisoned for any term not " exceeding two years, with or with-"out hard labour, and with or

"without solitary confinement, and, if a male under the age of sixteen years, with or without whipping." (Former provision, 7 & 8 Geo. 4, c. 29, s. 8.)

By s. 45, "whosoever shall, with "menace or by force, demand any "property, chattel, money, valuable "security, or other valuable thing "of any person, with intent to steal "the same, shall be guilty of felony, " and, being convicted thereof shall " be liable, at the discretion of the "court, to be kept in penal servi-"tude for the term of five years " (27 & 28 Vict. c. 47), or to be im-" prisoned for any term not exceed-"ing two years, with or without "hard labour, and with or without "solitary confinement." (Previous provision, 7 Will. 4 & 1 Vict. c. 87, ss. 7, 12.)

By s. 49, "it shall be immaterial "whether the menaces or threats be "of violence, injury, or accusation, "to be caused or made by the of-"fender, or by any other person."

A letter written to the prosecutors in the following terms: "Gentlemen, You say that B. O. N. will accede to the terms proposed, and send part of the money to any place that may be named. I must have sufficient means at my disposal, or all will be lost. I am fully assured that 20,000*l*. will not cover the horrid catastrophe, which would not only stop your bank for a time, but perhaps forever, as the books would be all destroyed. The match, the most dreadful and last resource, has been contemplated by the cracksman or captain of this most horrid gang, which I fervently pray to be relieved from." The letter then, after pointing out a certain pipe, behind which the money was to be deposited, proceeded, "If, therefore, you will send a man you can confide in, and lodge under that pipe 250 sovereigns unseen by mortal eye, I swear by Almighty God, most solemnly, that the evil to ed. Let the money be lodged tomorrow, Saturday morning, by halfpast eleven, but not one moment sooner, and all shall be well with you; but if I am at all deceived, in any possible way, all must fall upon yourselves": was a letter demanding money, with menaces, within 7 & 8 Geo. 4, c. 29, s. 8, although the writer did not hold out any threat that he himself would do any mischief. Reg. v. Smith, T. & M. 214; 1 Den. C. C. 510; 2 C. & K. 882; 14 Jur. 92; 19 L. J., M. C. 80; 4 Cox, C, C. 42.

The doctrine that the threat held out must be such as would be likely to intimidate a firm man, and not merely a person of a timid disposition, must be taken to refer to the nature of the threat, and not to the nerves of the party to whom it is addressed. *Ib*.

The words, without any reasonable or probable cause, in 7 & 8 Geo. 4, c. 29, s. 8, concerning sending threatening letters, apply to the money demanded, and not to the accusation threatened to be made. Reg. v. Hamilton, 1 C. & K. 212—Rolfe and Williams.

In a threatening letter, the threat must be direct and plain. Rev v. Girdwood, 1 Leach, C. C. 142; 2 East, P. C. 1120.

An anonymous letter stated, that the writer had overheard certain persons agree together to do an injury to the person or property of the prosecutor, to whom the letter was sent; and that if thirty sovereigns were laid in a particular place, the writer would give such information as would frustrate the attempt:—Held, that this was not a threatening letter within 7 & 8 Geo. 4, c. 29, s. 8, although it appeared that the letter was a mere device to defraud the prosecutor of thirty sovereigns. Rex v. Pickford, 4 C. & P. 227—Bolland.

eye, I swear by Almighty God, It is no answer to a charge of most solemnly, that the evil to which I have alluded shall be avert-contents would lead the party to

suspect who wrote the letter, unless it is shewn that the prisoner did not mean to conceal himself. Rex v. Wagstaff, R. & R. C. C. 398.

A threatening letter referring, in the terms of it, to such circumstauces as were plainly intended to denote who the writer was, and making a demand of a sum of money in controversy between him and the prosecutor, which the latter had received, and which the former had before insisted should be accounted for to him, was not a threatening letter within 9 Geo. 1, c. 22, or 27 Geo. 2, c. 15, although the writer did not subscribe his name. Rex v. Heming, 2 East, P. C. 1116; 1 Leach, C. C. 445, n.

It is for the jury and not for the court to determine whether or not the letter is a threatening one within the statute, and the judge will not withdraw it from their consideration, unless by no possible construction can it be held to involve a threat. Reg. v. Carruthers, 1 Cox, C, C. 138—Maule.

The words, without any reasonable and probable cause, in 7 & 8 Geo. 4, c. 29, s. 8, must be taken to apply to the state of the prisoner's mind at the time of making the demand; and the jury must look at all the circumstances for the purpose of deciding whether at that time the prisoner bona fide believed that she or he had reasonable cause. Reg. v. Miard, 1 Cox, C. C. 22—Tindal.

Threatening to expose a clergyman who had had criminal intercourse with a woman in a house of ill-fame, in his own church and village, to his own bishop, to all the other bishops, and to the Archbishop of Canterbury; and also to publish his shame in the newspapers, is such a threat as a man of ordinary firmness cannot be expected to resist, and therefore falls within the word menaces used in the statute. *Ib*.

Where a person demanded a shilling from the prosecutor, and, on being refused, became very abusive, and threatened to burn up the prosecutor, and then proceeded to make an attempt to set fire to a stack of his:—Held, that he was liable to be menaces, under 7 Will. 4 & 1 Vict. c. 87, s. 7. Reg. v. Taylor, 1 F. & F. 511—Pollock.

To constitute the offence of demanding money with menaces, under 24 & 25 Vict. c. 96, s. 45, the menace or threat must be of a character to produce in a reasonable man some degree of alarm or bodily fear, and such alarm must be of a nature and extent to unsettle the mind upon which it operates, and take away that free voluntary action which constitutes consent. Reg. v. Walton, 9 Cox, C. C. 268; L. & C. 288; 9 Jur., N. S. 259; 32 L. J., M. C. 79; 11 W. R. 348; 7 L. T., N. S. 754.

A threat to imprison a man upon a fictitious charge is a menace within 24 & 25 Vict. c. 96, s. 45. Reg. v. Robertson, L. & C. 483; 10 Cox, C. C. 9; 11 Jur., N. S. 96; 34 L. J., M. C. 35; 13 W. R. 101; 11 L. T., N. S. 386.

A conviction under that section is good, although the money has been actually obtained. *Ib*.

A prisoner was convicted for de manding money with menaces, with intent to steal the same. The prosecutor, having spoken to a female in the street, at night, the prisoner, a policeman, came up, and told him he had been talking to a prostitute, and that he must go with him to Bridewell, and that he, the prosecutor, was under a penalty of. 11. and costs, for talking to a prostitute in the streets; but if he would give him 5s. he might go about his business. The prosecutor thereupon gave him 4s. 6d.:—Held, that the conviction was right. Ib.

3. Threatening to accuse of Crime, or with Intent to Extort.

By 24 & 25 Vict. c. 96, s. 46, "whosoever shall send, deliver or "utter, or directly or indirectly "cause to be received, knowing the "contents thereof, any letter or " writing accusing or threatening to "accuse any other person of any "crime punishable by law with "death or penal servitude for not "less than seven years, or of any " assault with intent to commit any "rape, or of any attempt or en-"deavour to commit any rape, or " of any infamous crime as herein-"after defined, with a view or in-"tent, in any of such cases, to ex-"tort or gain by means of such let-"ter or writing any property, chat-"tel, money, valuable security or "other valuable thing from any " person, shall be guilty of felony, "and, being convicted thereof, "shall be liable, at the discretion " of the court, to be kept in penal "servitude for life, or for any term " not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-" bour, and with or without solitary " confinement, and, if a male under "the age of sixteen years, with or "without whipping;

"And the abominable crime of "buggery, committed either with " mankind or with beast, and every "assault with intent to commit the "said abominable crime, and every "attempt or endeavour to commit "the said abominable crime, and " every solicitation, persuasion, pro-"mise or threat offered or made to "any person whereby to move or "induce such person to commit or " permit the said abominable crime, "shall be deemed to be an infamous " crime within the meaning of this "act." (Former provisions, 7 & 8 Geo. 4, c. 29, s. 8, and 10 & 11 Vict. c. 66, s. 1.)

By s. 57, "whosoever shall ac-"euse, or threaten to accuse, either

"the person to whom such accusa-"tion or threat shall be made, or "any other person, of any of the in-"famous or other crimes lastly "hereinbefore mentioned, with the "view or intent, in any of the cases "last aforesaid, to extort or gain "from such person so accused or "threatened to be accused, or from "any other person, any property, "chattel, money, valuable security "or other valuable thing, shall be "guilty of felony, and, being con-"victed thereof, shall be liable, at "the discretion of the court, to be "kept in penal servitude for life, or "for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term not " exceeding two years, with or with-" out hard labour, and, if a male un-"der the age of sixteen years, with "or without whipping." (Previous provision, 10 & 11 Viet. c. 66, s. 2.) By s. 48, "whosoever, with in-"tent to defraud or injure any "other person, shall, by any unlaw-"ful violence to or restraint of, or "threat of violence to or restraint "of, the person of another, or by ac-"cusing or threatening to accuse "any person of any treason, felony, " or infamous crime as hereinbefore "defined, compel or induce any "person to execute, make, accept, "indorse, alter or destroy the whole "or any part of any valuable secu-"rity, or to write, impress or affix "his name or the name of any other "person, or of any company, firm, "or co-partnership, or the seal of "any body corporate, company or "society, upon or to any paper or " parchment, in order that the same "may be afterwards made or con-"verted into, or used or dealt with "as a valuable security, shall be guilty of felony, and, being con-"victed thereof, shall be hable, at "the discretion of the court, to be " kept in penal servitude for life, or "for any term not less than five " years (27 & 28 Vict. c. 47), or to "be imprisoned for any term no.

"exceeding two years, with or without hard labour, and with or without solitary confinement.

By s. 49, "it shall be immaterial "whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation, to be 
caused or made by the offender or

"by any other person."

On the trial of an indictment for threatening to accuse of an infamous crime in order to extort money, the guilt or innocence of the party threatened is quite immaterial. Reg. v. Cracknell, 10 Cox, C. C. 408—Willes,

Therefore, although the prosecutor may be cross-examined with a view to shew that he is really guilty of the offence imputed to him, yet no evidence will be allowed to be given, even in cross-examination, by another witness, to prove that the prosecutor is really guilty. Ib.

On an indictment for threatening to publish certain matter with intent to extort money, it is not necessary that the matter should be libellous. Reg. v. Coghlan, 4 F. &

F. 316—Bramwell.

An intent to extort money may be implied from the circumstances, and does not require an express demand of money. *Ib*.

But, if it appears that the object is to compel the delivery of accounts of monies honestly believed to be due and owing, there is no ev-

idence of the intent. Ib.

A person threatening A.'s father that he would accuse A. of having committed an abominable offence upon a mare, for the purpose of putting off the mare, and forcing the father, under terror of the threatened charge, to buy and pay for her at the prisoner's price, is guilty of threatening to accuse with intent to extort money, within 24 & 25 Vict. c. 96, s. 47. Reg. v. Redman, 10 Cox, C. C. 159; 1 L. R., C. C. 12; 35 L. J., M. C. 83; 14 W. R. 56; 11 Jur., N. S. 960; 13 L. T., N. S. 303.

Where a prisoner is indicted for feloniously sending a letter, threatening to accuse of an infamous crime, with intent to extort money, both the threat and the intent may be inferred, even against the declaration of the prisoner at the time, and in the absence of express proof, from the letter itself, from his previous and contemporaneous, and even from his subsequent conduct and expressions to third parties. Reg. v. Menage, 3 F. & F. 310—Martin,

The threatening to accuse, under 7 & 8 Geo. 4, c. 29, s. 8, need not be a threat to accuse before a judicial tribunal; a threat to charge before any third person is enough. Rew v. Robinson, 2 M. & Rob. 14; 2 Lewin, C. C. 273—Patteson.

On the trial of an indictment for threatening to accuse a person of an abominable crime, with intent to extort money, and, by intimidating the party by the threat, in fact obtaining the money, the jury need not confine themselves to the consideration of the expressions used before the money was given, but may, if those expressions are equivocal, connect with them what was afterwards said by the prisoner when he was taken into custody. Reg. v. Kain, 8 C. & P. 187—Park and Parke.

Where it was proved that a prisoner, to obtain monies, said to the prosecutor, "If you do not assist me, I will say you took indecent liberties with me some time ago":
—Held, not sufficient to sustain a count which charged that he threatened to accuse the prosecutor of having attempted and endeavoured to commit with him the abominable crime. Reg. v. Norton, 8 C. & P. 671—Recorder Law.

A prisoner was indicted under 7 & 8 Geo. 4, c. 29, s. 8, in a first count, for feloniously accusing A. of a certain infamous crime, that is to say, of having made to the prisoner a certain solicitation, whereby to

move and induce the prisoner to commit with him, the crime of sodomy, with a view to extort and gain money from him; second count, charging the same offence somewhat differently:—Held, that the evidence was not sufficient to prove the intent laid. Reg. v. Middleditch, 1 Den. C. C. 92.

An indictment on 30 Geo. 2, c. 24, for sending a threatening letter, intending to extort and gain money, could not be supported by shewing a letter threatening to accuse the prosecutor of an unnatural crime, if he did not give up a certain bill drawn by the prisoner, of which the prosecutor was the holder. Rex v. Major, 2 East, P. C. 1118; 2 Leach, C. C. 772.

Sending a letter threatening to accuse the prosecutor of having made overtures to the prisoner to commit sodomy with him, did not threaten to charge such an infamous crime as to be within 4 Geo. 4, c. 54, s. 3. Rex v. Hickman, 1 M. C. C. 34.

On a charge of threatening to accuse of an infamous crime, it appeared that the prisoner had made a charge before a magistrate against the prosecutor of endeavouring to excite one of them to the commission of an unnatural offence:—Held, that the depositions of the prisoners upon that occasion were admissible against them. Reg. v. Brainell, 4 Cox, C. C. 402—Williams.

When before the magistrate the prisoners were separately cross-examined as to their being together on the day when the offence was alleged to have been committed, how they had been occupied, &c., and their answers were so contradictory in themselves and so inconsistent with each other, that the magistrate dismissed the charge against the then defendant, and bound him over to prosecute the prisoner for endeavouring to extort money by threats:—Held, that the answers

elicited on such cross-examination were not admissible. *Ib*.

Where the charge made by the prisoners was one specifically of an indecent assault:—Held, that it was for the jury to take into their consideration not only the charge itself, but the conduct of the prisoners generally, for the purpose of deciding what was the nature of the accusation they intended to prefer. *Ib*.

Whether the crime of which the prisoner was accused by the prosecutor was actually committed is not material in this, that the prisoner is equally guilty if he intended by such accusation to extort money. Reg. v. Richards, 11 Cox, C. C. 43

–Blackburn.

But it is material in considering the question whether, under the circumstances of the case, the intention of the prisoner was to extort money, or merely to compound a

felony. Ib.

Upon an indictment for sending a letter demanding money, with menaces, and without reasonable or probable cause, it appeared that the prisoner, who had been in the prosecutor's employ as traveller, had afterwards set up in business for himself, married, and became the father of children. There was no evidence of the prosecutor having indulged in the slightest familiarity with the prisoner's wife, or of the prisoner having at any time any ground to suspect that such had been the case, and the prosecutor denied it; but the prisoner sent to him letters imputing to the prosecutor adultery with his wife, that he was the father of one of his children, stating that many a man would have sent a bullet through him, that he was to refund 44l. The judge left to the jury whether the meaning of the letters was to demand a sum of money, and to menace him with adultery, or to send the child to the prosecutor's house; and whether there was any reasonable or probable cause for the demand of the money, or for any of the charges, on all of which questions they found against the prisoner, and found him guilty:—Held, that the letters implied a threat either of bodily violence, or to charge the prosecutor with adultery, or to send the child to his house, and that the conviction was right. Reg. v. Chalmers, 16 L. T., N. S. 363; 15 W. R. 773; C. C. R.

# 4. Letters Threatening to Burn or Destroy.

By 24 & 25 Vict. c. 97, s. 50, "whosoever shall send, deliver or " utter, or directly or indirectly cause "to be received, knowing the con-"tents thereof, any letter or writing "threatening to burn or destroy any "house, barn or other building, or "any rick or stack of grain, hay or "straw, or other agricultural pro-"duce, or any grain, hay or straw, "or other agricultural produce, in " or under any building, or any ship "or vessel, or to kill, maim or " wound any cattle, shall be guilty "of felony, and, being convicted "thereof, shall be liable, at the dis-"cretion of the court, to be kept in "penal servitude for any term not "exceeding ten years and not less "than five years (27 & 28 Vict. c. "47), or to be imprisoned for any "term not exceeding two years, "with or without hard labour, and "with or without solitary confine-"ment, and, if a male under the "age of sixteen years, with or with-"out whipping." (Former provisions, 4 Geo. 4, c. 54, s. 3, and 10 & 11 Vict. c. 66, s. 1.)

Sending a letter to A. threatening to burn a house of which he was owner, but let by him to, and occupied by a tenant, was not an offence within 4 Geo. 4, c. 54, s. 3. Reg. v. Burridge, 2 M. & Rob. 296

Indictment for sending a threat-

ening letter under 4 Geo. 4, c. 54, s. 3. First count charged G. with sending to R., and threatening to burn R.'s houses. It was proved that R. had only a reversionary interest in these houses. Quære, whether G. could be convicted on that count. Reg. v. Grimwade, 1 Den. C. C. 30; 1 C. & K. 592; 1 Cox, C. C. 85.

A count charged G. with sending to R. and threatening to burn the said houses, laying them as the property of B., the tenant. It was proved that G. dropped the letter in a public road near R.'s honse; that A. found it and gave it to H., who opened and read it, and gave it to E., who shewed it to both B. and R.:—Held, that this was a sending within 4 Geo. 4, c. 54, s. 3. Ib.

Sending a letter threatening to burn standing corn was not an offence within 4 Geo. 4, c. 54, s. 3. Reg. v. Hill, 5 Cox, C. C. 233—Pollock.

An indictment on 4 Geo. 4, c. 54, s. 3, charging that the prisoner sent a letter to T. L., threatening to burn the house of J. R., was bad—as the threat must be to the owner of the property; and if the letter was sent to T. L., with intent that it should reach J. R., and did reach him, it should have been charged in the indictment as sent to J. R. Reg. v. Jones, 2 C. & K. 398; 1 Den. C. C. 218; Reg. v. Grimwade, 1 Cox, C. C. 67.

A conviction on 27 Geo. 2, c. 15, for sending a letter to the prosecutor, threatening "to set fire to his mill, and likewise to do all the public injury they were able to him, in all his farms and seteres," was wrong, when the prosecutor had not then any mill to which the threat of burning would apply; (having parted with it three years before); and the threat as to the farm, &c., not necessarily implying a burning. Reg. v. Jepson, 2 East, P. C. 1115.

#### 5. Letters threatening to Murder.

By 24 & 25 Viet. c. 100, s. 16, "whosoever shall maliciously send, "deliver or utter, or directly or in-"directly cause to be received, "knowing the contents thereof, any "letter or writing threatening to "kill or murder any person, shall "be guilty of felony, and, being "convicted thereof, shall be liable, "at the discretion of the court, to " be kept in penal servitude for any "term not exceeding ten years, and "not less than five years (27 & 28 "Vict. c. 47), or to be imprisoned "for any term not exceeding two "years, with or without hard la-"bour, and with or without solitary "confinement, and, if a male un-"der the age of sixteen years, with "or without whipping." (Former provisions, 4 Geo. 4, c. 54, s. 3, and 10 & 11 Vict. c. 66, s. 1.)

A letter signed, "I am your Cutthroat," and stating, that if the person to whom it was sent had his deserts, he would not live the week out; and that the writer would be with him shortly, and if he made light of it the writer would make light of him and his, so plainly conveys a threat to kill and murder, as to render it unnecessary to insert either innuendos or prefatory allegations in the indictment to explain its meaning. Rex v. Boucher, 4 C. & P. 562—Patteson.

The intentionally putting a threatening letter in a place where it is likely to be seen and read by the party to whom it is directed, or to be found by some other person, and which is in fact so found and conveyed to the party, was an uttering of the letter within 10 & 11 Vict. c. 66, s. 1. Reg. v. Jones, 5 Cox, C. C. 226—Patteson.

## 6. Threatening to Sue for Penalties.

Threatening by letter, or otherwise, to put in motion a prosecution by a public officer, to recover penalties for selling Fryer's Balsam

without a stamp (which by 42 Geo. 3, c. 36, was prohibited to be vended without a stamped label), for the purpose of obtaining money to stay the prosecution, is not such a threat as a firm and a prudent man may not be expected to resist, and therefore is not in itself an indictable offence at common law, although it is alleged that the money was obtained; no reference being made to any statute which prohibits such attempt. Rex v. Southerton, 6 East, 126; 2 Smith, 305.

But it seems that such an offence is indictable upon 18 Eliz. c. 5, s. 4, for regulating common informers, which prohibits the taking of money, without consent of court, under colour of process, or without process, from any person upon pretence of any offence against a penal law. *Ib*.

But no indictment for any attempt to commit such a statutable misdemeanor can be sustained as a misdemeanor at common law, without at least bringing the offence intended within, and laying it to be against, the statute. *Ib*.

Though if the party so threatened had been alleged to be guilty of the offence imputed within the statute imposing the duty and creating the penalty, such an attempt to compound and stifle a public prosecution for the sake of private lucre, in fraud of the revenue, and against the policy of the statute, which gives the penalty as auxiliary to the revenue, and in furtherance of public justice for example's sake, might also, upon general principles, have been deemed a sufficient ground to sustain the indictment at common law. Ib.

# 7. Threatening to publish Defamatory Matter.

By 6 & 7 Vict. c. 96, s. 3, "if "any person shall publish, or threat." en to publish, any libel upon any "other person, or shall, directly or

"indirectly threaten to print or "publish, or shall directly or indi-"rectly propose to abstain from " printing or publishing, or shall di-"rectly or indirectly offer to pre-" vent the printing or publishing of "any matter or thing touching any "other person, with intent to extort "any money or security for money, "or any valuable thing from such " or any other person, or with in-"tent to induce any person to "confer or procure for any per-"son any appointment or office "of profit or trust, every such of-"fender, on being convicted there-"of, shall be liable to be impris-"oned, with or without hard la-"bour, in the common gaol or "house of correction for any term "not exceeding three years: pro-"vided always, that nothing here-"in contained shall in any manner "alter or affect any law now (1843) "in force in respect of the sending " or delivery of threatening letters " or writings."

Counts under this section, charging the defendants with unlawfully offering to prevent the publishing, and with threatening to publish certain matters touching the prosecutor, with intent to extort money, are not supported by evidence, that they attempted to obtain the money by leading the prosecutor to believe that an information would be laid against him by one G., for an offence relating to the post-horse duties, and that they had the means of preventing the proceedings, and would prevent it on being paid a sum of money. Reg. v. Yates, 6 Cox, C. C. 441.

#### 8. Persons Indictable.

Where a wife wrote a threatening letter, and the husband carried it to the party threatened:—Held, that the husband, though privy to the writing, was not within 9 Geo. 1, c. 22, and 27 Geo. 2, c. 15, nor could the wife alone be convicted unless she wrote and sent it without |

the husband who delivered it being privy to the contents. Rex v. Hammond, 2 East, P. C. 1119; 1 Leach, C. C. 444.

#### 9. Indictment.

An indictment on 4 Geo. 4, c. 54, s. 5, for demanding money, must have distinctly shewn by whom it was demanded. Rex v. Dunkley, 1 M. C. C. 90.

And an indictment on the same statute by threatening to accuse, &c., must have positively shewn

who was threatened. Ib.

On an indictment for threatening to accuse of an infamous crime, with intent to extort a certain security for money, it is not necessary to aver to whom the security belonged. Reg. v. Tiddeman, 4 Cox, C. C. 387.

An indictment for sending a threatening letter must set out the letter. Rex v. Lloyd, 2 East, P. C. 1122; S. P., Reg. v. Hunter, 2 Leach, C. C. 624.

The offence of sending a threatening letter may be laid in the county where it is delivered by the post to the prosecutor. Rex v. Esser, 2 East, P. C. 1125; S. P., Rex v. Girdwood, 2 East, P. C. 1120; 1 Leach, C. C. 142.

An indictment, charging that a prisoner "did feloniously and maliciously, with intent to extort money, charge and accuse A. with having committed the horrible and detestable crime, and feloniously, &c., menace and threaten to prosecute the said A.," was not good under 4 Geo. 4, c. 54, s. 3. Rex v. Abgood, 2 C. & P. 436—Garrow.

An indictment for sending a threatening letter stated that one R. had lately built and completed a house; and then charged that the prisoner feloniously sent to one L. a certain letter, threatening to burn the house so built by the said R. Upon objection taken that the indictment ought to have charged a sending to R.:-Held, that the in-

Fish. Dig.—34. Digitized by Microsoft®

dictment was bad on that ground. Reg. v. Jones, 2 Cox, C. C. 434—C. C. R.

#### 10. Evidence.

Inspection of Letter.]—If a party is indicted for sending a threatening letter, the court will, on motion of the prisoner's counsel, as soon as the bill is found, order that the letter be deposited with the officer of the court, that the prisoner's witnesses may inspect it. Rex v. Harrie, 6 C. & P. 105—Littledale and Bolland.

Of Sending.]—A letter, signed by two initials, as R. R., was a letter without a name subscribed thereto within 9 Geo. 1, c. 22. Rex v. Robinson, 2 Leach, C. C. 749; 2 East, P. C. 1110.

The bare delivery of a letter containing threats, though sealed, is evidence of a knowledge of its contents. Rex v. Girkwood, 1 Leach, C. C. 142; 2 East, P. C. 1120.

Indictment, with three counts for three separate letters. It was proposed to prove the sending of all three:—Held, that evidence of one only was admissible. Reg. v. Ward, 10 Cox, C. C. 42—Byles.

To bring the offence of sending a threatening letter within 27 Geo. 2, c. 15, the letter must have been sent to the person threatened, and it must have been so stated in the indictment Rex v. Paddle, R. & R. C. C. 484.

But it seems, that sending the letter to A., in order that he may deliver it to B., is a sending to B., if the letter was delivered by A. to B. *Ib*.

If a letter threatening to burn the premises of A., but directed to B., is left at the gate on a public highway, with the intention that it should reach as well A. as B., that was a sending to A. within 4 Geo. 4, c. 54, s. 3. Reg. v. Grimwade, 1 Cox, C. C. 85; 1 Den. C. C. 30.

On an indictment on 27 Geo. 2,

c. 15, for sending a threatening letter, the dropping a letter in a man's way, in order that he might pick it up, was a sending of it. Rex v. Wagstaff, R. & R. C. C. 398.

The sending was within this statute, although the party saw the prisoner drop the letter, if the prisoner did not suppose the party knew him, and intended he should not.

Affixing a threatening letter on a gate in a public highway, is some evidence to go to the jury of a sending thereof. *Reg.* v. *Williams*, 1 Cox, C. C. 16—Cresswell.

When there is no person in existence of the precise name which the letter bears as its address, it is a question for the jury whether the party into whose hands it falls was really the one for whom it was intended. Reg. v. Carouthers, 1 Cox, C. C. 138—Maule.

A prisoner was indicted for sending a threatening letter. The only evidence against him was his own statement that he should never have written it but for W. G.:—Held, not sufficient. Rex v. Howe, 7 C. & P. 268—Abinger.

Of Intent. —On the trial of an indictment for threatening to accuse the prosecutor of an infamous crime with intent to extort money, it was proved that the prisoner had gone up to the prosecutor and said to him, "If you do not give me a sovereign I will charge you with an indecent assault ":-Held, that inasmuch as, if the jury believed that such language had been used by the prisoner, the intent was manifest, evidence for the prosecution tending to shew that the prisoner had made a similar charge two years before ought not to be admitted. Reg. v. McDonnell, 5 Cox, C. C. 153 —Erle.

On the trial of an indictment for accusing a person of an unnatural crime with intent to extort money—the prisoner being a soldier, and the accusation having been made while he was on duty as sentry—evidence of declarations made by him on a former occasion, on coming off guard, that he had obtained money from a gentleman by threatening to take him to the guard-house and accuse him of an unnatural crime, is admissible. Reg.v. Cooper, 3 Cox, C. C. 547—Creswell.

The prisoner was proved to have made the accusation in these words, "I charge this man with indecently assaulting me":-Held, that it was a question for the jury—taking into consideration the prisoner's conduct throughout the transaction—whether by those words he did not mean to allege that the prosecutor had solicited him to the commission of an unnatural offence.

Of Meaning of Letter. ]—If the terms of a threatening letter are doubtful as to the exact accusations the prisoner meant to threaten, his declarations subsequently made, on being asked what he meant to impute, are evidence to explain the meaning of the letter. Rex v. Tuck-. er, Car. C. L. 288; 1 M. C. C. 134.

The prisoner sent to the prosecutor a letter, the language of which was ambiguous:—Held, that the prosecutor might be asked what appeared to him to be the meaning of the letter. Reg. v. Hendy, 4 Cox, C. C. 243—Erle.

Evidence is admissible to shew that, under the particular circumstances, the words in such a letter have not their ordinary meaning, but the meaning imputed to them upon the record, and therefore the witness may be asked whether he understood the meaning to be that which the record imputed.

In case of Accessories.]—Where an accessory after the fact to a charge of sending threatening letters, is tried in the absence of the

sent by the principal are evidence Reg. v. Hansill, 3 Cox, on the trial. C. C. 597.

### XLI. TREASON.

 The Offence, 467.
 Indictment, Lists of Witnesses, Jury, Evidence, Trial and Judgment, 468.

### 1. The Offence.

25 Edw. 3, st. 5, c. 2 (the Statute of Treasons); 1 M. sess. 1, c. 1: 36 Geo. 3, c. 7 (made perpetual by 57 Geo. 3, c. 6); 5 & 6 Vict. c. 51; 11 & 12 Vict. c. 12.

25 Edw. 3, st. 5, c. 2, was extended toIreland by Poyning's Act, 10 Hen. 7, c. 10, but 36 Geo. 3, c. 7, or 57 Geo. 3, c. 6, did not extend to Ireland. See O'Brien v. Reg., 3 Cox, C. C. 360; 2 H. L. Cas. 465; but now extend to Ireland by 11 & 12 Vict. c.

If in an indictment for treason it is stated as an overt act, that the prisoner discharged at the sovereign a pistol, loaded with powder and a certain bullet, and thereby made a direct attempt upon the life of the sovereign; the jury must be satisfied that the pistol was a loaded pistol,—that is, there was something in it beyond the powder and wadding; but it seems it is not necessary for them to be satisfied that it was actually loaded with that which is generally known by the name of a bullet. Reg. v. Oxford, 9 C. & P. 525—Denman, Alderson and Patteson. See 5 & 6 Vict. c. 51, s.

To constitute the treason of levying war against her majesty within the realm, there must be an insurrection, there must be force accompanying that insurrection, and it must be for an object of a general nature; and if a person acts as the leader of an armed body, who enters a town, and their object is neither to take the town, nor atprincipal, the letters so written and | tack the military, but merely to

make a demonstration to the magistracy of the strength of their party, either to procure the liberation of certain prisoners convicted of some political offences, or to procure for those prisoners some mitigation of their punishment, this, though an aggravated misdemeanor, is not high treason. Reg. v. Frost, 9 C. & P. 129—Tindal, Park and Williams.

The prisoner is not bound of necessity to shew what was the object or meaning of the acts done. offence must be made out by those who make the charge.

It will be treason in a foreigner resident here, or who is himself abroad, if his family resides here, to aid even his own countrymen in acts or purposes of hostility, whether his own sovereign is at enmity or peace with ours, for it is a breach of the local allegiance due from Rex v. Delamotte, 1 East, him. P. C. 53.

An apprehension, though ever so well grounded, of having property wasted or destroyed, or of suffering any other mischief not endangering the person, will afford no excuse for joining or continuing with rebels. Rex v. M' Growther, 1 East, P. C.

But it is otherwise if the party joins from fear of death or by compulsion. Rex v. Gordon, 1 East, P. C. 71.

An overt act of piracy only may shew a traitorous intent against the king, in treason for adhering to the king's enemies, if the indictment alleges the intent to be to seize the ships of the king as well as his subjects. Rex v. Evans, 1 East, P. C. 80; 2 East, P. C. 798.

Indictment for high treason in compassing the king's death, and adhering to his enemies. Overt act, conspiring with others to send intelligence to the enemy concerning the disposition of the king's subjects in case of an invasion. Rex v. Stone, 6 T. R. 527; 1 East, P. C. 79, 99.

Any intelligence sent to the enemy in order to serve them in shaping their attack or defence, though the purport of it may be to dissuade them from an invasion, is high Ib.treason.

Though the intelligence is intercepted. Rex v. Hensey, 2 Ld. Ken.

366; 1 Burr. 642.

It is high treason to attempt, by intimidation and violence, to compel the repeal of a law. Rex v. Lord George Gordon, 2 Dougl. 590.

In high treason, the overt act of one is the overt act of all; and therefore a common design must, in such cases, precede the proof of individual acts. Reg. v. Brittain, 3 Cox, C. C. 77—Coltman.

2. Indictment, List of Witnesses, Jury, Evidence, Trial and Judgment.

35 Hen. 8, c. 2; 1 Edw. 6, c. 12, s. 22; 5 & 6 Edw. 6, c. 11, s. 12; 1 & 2 P. & M. c. 10, ss. 7 and 8; 7 & 8 Will. 3, c. 3; 7 Anne, c. 21, s. 5; 6 Geo. 3, c. 53, s. 3; 30 Geo. 3, c. 48; 39 & 40 Geo. 3, c. 93; 54 Geo. 3, c. 146; 6 Geo. 4, c. 50, s. 21; 5 & 6 Vict. c. 51, s. 1.

*Indictment.*]—Semble, that counts charging a party with high treason in "compassing, &c., the maim and wounding" of his majesty, and with "compassing, &c., the wounding" of his majesty, are bad. Rex v. Collins, 5 C. & P. 305—Bosanquet and Gurney.

An allegation that the prisoner indicted for high treason has not had a true copy of the indictment is not matter for a plea, but only a ground for an application for a postponement of the trial. Reg. v. Burke, 10 Cox, C. C. 519.

The copy of the indictment furnished to the prisoner need not contain a copy of the indorsement of the finding of the grand jury in order to satisfy the statute. Ib.

List of Witnesses. A person indicted for high treason is entitled,

under 7 Anne, c. 21, s. 14, to a copy of the indictment, and a list of the witnesses for the crown, and of the jurymen who are to be returned on the panel, ten days before his arraignment. Rex v. Lord George Gordon, 2 Dougl. 590.

On a trial for high treason, it was objected, after the jury had been charged with the prisoner, but before the first witness was examined, that the prisoner had no list of witnesses delivered to him. dictment was found on the 11th of December, on the 12th of December a copy of it and of the panel of the jurors intended to be returned by the sheriff, were delivered to the prisoner; and on the 17th of December the list of witnesses was delivered to him. The prisoner was arraigned on the 31st of December. The objection to the delivery of the list of witnesses was, that the copy of the indictment and the list of jurors and witnesses should have been all delivered at the same time simul et semel:—Held, that the delivery of the list of witnesses was not a good delivery in point of law, but that the objection to the delivery of the list of witnesses was not made in due time; and that, if the objection had been made in due time, the effect of it would have been a postponement of the trial, in order to give time for a proper delivery of the list. Reg. v. Frost, 9 C. & P. 163; 2 M. C. C. 140; 4 Jur. 53.

Description of Witnesses in Lists. -Any objection to the description of the witness in the list of witnesses must be taken on the voir dire, and comes too late after the witness is sworn in chief. Reg. v. Frost, 9 C. & P. 183; 2 M. C. C. 140; 4 Jur. 53.

The list may properly describe a party as lately of such a place. Rex v. Watson, 2 Stark. 116—Ellenborough.

But if, upon the examination of

pears that he has had a different and later place of residence, the description will not be sufficient. Ib.

A witness was described in the list of witnesses as "S. S., of the parish of S. W., in the borough of N., in the county of M., labourer." N. was a place with 6,000 inhabitants, and formed only a part of the parish of S. W., which was a large parish, extending beyond the borough of N.:—Held, sufficient, and that it was neither a misdescription, nor too general. Reg. v. Frost, 9 C. & P. 147—Tindal, Parke and  $\overline{\mathbf{W}}$ illiams.

A witness was described in the list of witnesses as " of Cross-y-Cyloy, in the parish of L." The witness stated, that he lived near Cross-y-Clog (which means Cross of the Cock), and that there were two public houses, each so called; and that his house was between them, and sixty yards from each. It was also proved, that there was a cluster of houses at this place, and that a witness had directed invoices to one of them, as Cross-y-Clog:— Held, that the witness was properly described. Ib. 150.

A witness was described in the list of witnesses as "M. J., of P., in the parish of St. W., in the county of M., sometimes abiding at the house of his son, J. J., in the parish of B., in the said county. The witness occupied a house at P., in the parish of St. W., in which his wife resided, he going to work with his son, and returning to his house at P., about three days in every two months. The son's house was in the parish of M., and not in the parish of B.:—Held, that if the witness had been described as of P., in the parish of St. W., that would have been sufficient; but that, as the latter part of the description was incorrect, it vitiated the whole. Ib. 152.

Juries and Challenges. —If a true the witness upon the voir dire, it ap- | bill is found against a person for

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high treason, the judge will, on the application of the counsel for the crown, order the sheriff to furnish the solicitor to the treasury with a list of the persons to be summoned on the jury, that a copy of it may be delivered to the prisoner. Rev v. Collins, 5 C. & P. 305—Bosan-

guet and Gurney.

Where the prisoner's counsel asked that the names of the jurors should be taken from a ballot-box, instead of being called over in the order in which they stood in the panel, which was alphabetical, and this proposition was acquiesced in by the Attorney-General, the court allowed the names of the jurors to be taken from a hallot-box; but if the Attorney-General had objected, the court would not have granted the application. Reg. v. Frost, 9 C. & P. 136—Tindal, Parke, and Williams.

Amendment of Panels.]—The jury panel, in cases of treason, may be amended by correcting mistakes and inserting a description of the professions of the jurors. Rex v. Hardy, 1 East, P. C. 113.

Evidence.]—A letter sent by one of the conspirators, in pursuance of the common design, with a view of reaching the enemy, is evidence against all engaged in the same conspiracy. Rex v. Stone, 6 T. R.

527; 1 East, P. C. 79, 99.

A paper found in the possession of one of the conspirators, containing intelligence proved to have been collected by the prisoner, which paper was in the handwriting of the prisoner's clerk, is evidence against the prisoner. Aliter, of a paper in the same handwriting not appearing to have any connexion with the prisoner. *Ib*.

If one overt act is proved by one witness in the county in which the trial is had, which gives the grand jury jurisdiction to inquire, another overt act of the same species of treason, proved by another witness

in a different county, will make two witnesses within 7 & 8 Will. 3, c. 3. Rex v. Jellias, 1 East, P. C. 130.

A conviction of high treason may be upon the evidence of one witness only, in all cases where there is no corruption of blood. Rex v. Gahagan, 1 Leach, C. C. 42; 1 East, P. C. 129.

As to evidence of treason, see Rex v. Horne Tooke, 1 East, P. C. 60, 69; 2 Leach, C. C. 823.

In a case of high treason or conspiracy, the prosecutor may either prove the conspiracy which renders the acts of the co-conspirators admissible in evidence, or he may prove the acts of the different persons, and thus prove the conspiracy; therefore, in a case of high treason, where it appeared that a party had met, which was joined by the prisoner on the next day, the counsel for the prosecution was allowed to ask what directions one of the party gave on the day of their meeting, as to where they were to go, and for what purpose. Reg. v. Frost, 9 C.& P. 149—Tindal, Parke, and Williams.

Evidence had been given for the prosecution, that an armed party had attacked the W. hotel, in which the magistrates and troops were stationed. To shew that the intention of the party was not treasonable, but was merely to procure the release of certain prisoners, a witness was called to prove, that, on the party arriving at the hotel gate, they were asked by a special constable what they wanted, when one of them answered, "Surrender up your prisoners." It was proposed to call evidence in reply, that that was not said at the hotel gate:-Held, that this was properly evidence in reply. Ib. 159.

An alien was indicted for high treason, in compassing to depose the Queen, and in levying war against the Queen. The material overtacts of compassing to depose the Queen were—1st, conspiring at Dublin, to

raise rebellion and levy war within the realm, and 2ndly, levying war within the realm at various places. There was evidence that he was a member of the directing body of a treasonable conspiracy, having for its object the overthrow of the Queen's government, and the establishment of a republic in Ireland. There was also evidence that he had planned an attack upon the eastle of Chester, in England, for the purpose of seizing arms there, and conveying them to Ireland, with the view of raising an insurrection there. Evidence was also given that the directing body had, in February, 1867, given orders for a rising in Ireland. On the 23rd February, 1867, he was arrested while attempting to land in Dublin. the 5th March, 1867, he being in eustody, an insurrectionary movement, the result of the commands of the directing body of the conspiracy, broke out in several places in Ireland, and various acts of war were committed:—Held, that those acts of war were receivable against him on the indictment in England. Reg. v. M' Cafferty, 1 Ir. R., C. L. 363; 15 W. R. 1022; 10 Cox, C. C. 603.

The rule as to the necessity of having two witnesses in cases of high treason considered and discussed. *Ib*.

Practice at Trial.]—The prisoner has a right to address the jury, in addition to the speeches of his counsel. Rex v. Collins, 5 C. & P. 305—Bosanquet and Gurney.

Where the crown gave evidence in reply, the witness in reply was called before the second counsel for the prisoner addressed the jury, and the leading counsel for the prisoner commented on the evidence in reply, also before the second counsel for the prisoner addressed the jury. Reg. v. Frost, 9 C. & P. 160.

The court will not order that

money taken from a prisoner charged with high treason be restored to him, unless it is made to appear to the court that the money forms no part of the proof against him. *Ib.* 132.

Counsel may be assigned for a prisoner charged with high treason, upon an application made to the clerk of the crown, during an adjournment of the commissioners, between the finding of the indictment and the arraignment, or the prisoner will be allowed, if he wishes it, to delay naming his counsel till he is brought up to be tried. *Ib*.

Prisoners will be allowed copies of the depositions against them, on the terms prescribed by 6 & 7 Will. 4, c. 114, s. 3. *Ib.* 

A person charged with high treason cannot be allowed by the court before which he is tried to have two attornies, unless they are partners. Ib

The court will not order that papers taken from his house should be restored to him; neither will they order that he shall be furnished with copies of them. *Ib.* 133.

The only counsel who are recognized by the court, are the two counsel who are assigned by the court, and the court will not take notice of any assistant counsel. *Ib.* 135.

In charging a jury with a prisoner, it is not necessary to read the whole of the indictment at length to the jury, unless the prisoner or his counsel wish it; it is sufficient for the clerk of the crown to state the subject of it. *Ib.* 138.

During a trial for high treason, which was expected to last several days, the court ordered that the prisoner's attorney should have access to him every day, after the rising of the court, till 10 p.m., and before the sitting of the court, from 7 A.M., although it was stated by the governor of the prison that the prison was not open for any other

purpose till half-past 7 A.M., and was shut for the night at 9 P.M. Ib.

Treason Felony.]—The 11 & 12 Vict. c. 12, declares it to be felony to "compass, imagine, invent, devise, and intend to deprive and depose our lady the Queen," &c., &c. In support of the charge of this offence under the statute, it is sufficient to allege as overt acts that the defendants conspired, combined, confederated and agreed to commit the offence. Mulcahy v. Reg. (in error), 3 L. R., H. L. Cas. 306.

Where there are several overt acts charged in a count, and judgment is given on a general verdict of guilty on that count, such judgment will be sustained, though some of the matters alleged as overt acts may be improperly so alleged, provided that the count contains allegations of overt acts that are sufficiently alleged. *Ib*.

The allegation, in one count, of several different overt acts of felony

is not objectionable under 11 & 12 Vict. c. 12. Ib.

Under 11 & 12 Vict. c. 12, s. 3, it is sufficient evidence to support a conviction to shew that the prisoner was a member of a foreign society having for its object the several treasonable objects set out in the several counts of the indictment, and also the existence of a domestic association of similar denomination, and connected with that abroad: and then to prove overt acts done within the venue, in promotion of those objects, by members of the association, and it is not necessary to prove any act of the prisoner himself done in Ireland, or even that he was in Ireland during any part of the period that the associations were shewn to exist either at home or abroad. Reg. v. Meaney, 15 W. R. 1082; 1 Ir. R., C. L. 500; 10 Cox, C. C. 506.

The defendants were indicted un-

der the Treason Felony Act, 11 & 15 Vict. c. 12, in causing to be conveyed arms and ammunition into Ireland for the purpose of overthrowing the established government:—Held, that the party selling arms, knowing they are to be used for purposes of insurrection, is guilty of an overt act of conspiracy. cret storing of arms, and sending them, under feigned addresses, into districts where the confederacy exists, and with the sanction and knowledge of the confederacy, is evidence of the offence. Davitt, 11 Cox, C. C. 676.

#### XLII. TREASURE TROVE.

Concealing and Appropriating.]—In an indictment for concealing treasure trove from the crown, it is not necessary to aver that the person concealed it fraudulently. The words "unlawfully, wilfully and knowingly," are sufficient. Reg. v. Thomas, L. &. C. 313; 33 L. J., M. C. 22; 12 W. R. 108; 9 L. T., N. S. 488.

A., in ploughing, found large rings of old gold of considerable value, and sold them for brass to B. for 5s. 6d., saying where he found B. afterwards found out that they were gold, and offered them to a jeweller for sale as gold. B. said he had sold them to C. for Then B. and C. were at a bank together, depositing part of the proceeds for which C. had sold the gold rings: Held, that there was evidence to support a conviction of both B. and C. for knowingly concealing treasure trove from the crown. Ib.

An indictment for concealing treasure trove, averring that the Queen is entitled to the treasure, is good without any averment of any inquisition before the coroner, or office found as to the title of the

Queen; and a conviction upon such an indictment is good without any evidence as to such matters. v. Toole, 2 Ir. R., C. L. 36; 10 Cox, C. C. 75; 16 W. R. 439.

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(a) Jurisdiction, 503.

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#### 1. Indictment.

## (a) For what it lies in general.

An indictment will not lie for a mere civil injury. Rex v. Storr, 3 Burr. 1698.

As for pulling off the thatch of a man's dwelling-house. Rex v. At-

kins, 3 Burr. 1706. Or for selling, as two chaldrons of coals, a less quantity. Rex v. Os-

*born*, 3 Burr. 1697.

That which is declared by statute to be a misdemeanor cannot be a felony. Rex v. Walford, 5 Esp. 62 –Hotham.

An indictment lies not upon an act of Parliament which creates a new offence, and prescribes a particular remedy. Rex v. Wright, 1 Burr. 543.

A person charged with an offence under an act of Parliament which is repealed before the time of trial comes, must not be put upon trial. Anon., 2 Lewin, C. C. 22—Park.

Where a prohibition and a penalty are contained in the same section of a statute, the remedy must be by proceeding for the penalty; but where the prohibition is in one section, and the penalties are in a subsequent section, an indictment will lie. Reg. v. Buchanan, 8 Q. B. 883; 10 Jur. 736; 15 L. J., Q. B.

Acting as an attorney without having been admitted is a misdemeanor indictable under 6 & 7 Vict. c. 73, s. 2, although a person so acting is incapable of maintaining an action for fees, and the so acting is a contempt of court. 1b.

Fish. Dig.—35. Digitized by Microsoft®

To sustain an indictment against a clergymau for refusing to marry persons who have obtained a registrar's certificate for that purpose, they must have presented themselves to him to be married at some time when he could legally have married them. Reg. v. James, 3 C. & K. 167; T. & M. 300; 2 Den. C. C. 1; 14 Jur. 940.

# (b) Disobeying Orders of Justices and Others.

An indictment lies for disobeying an order of sessions. Rex v. Robinson, 2 Burr. 799; 2 Ld. Ken. 513.

The 6 & 7 Will. 4, c. 86, s. 20, which enacts, that the father or mother of a child, or, in case of their illness or absence, the occupier of the house in which the child should have been born, shall, within forty-two days after the birth, give information of the particulars thereof to the registrar, upon request, is imperative, and the party disobeying it is liable to an indictment. Reg. v. Price, 3 P. & D. 421; 11 A. & E. 727; 4 Jur. 291.

The quarter sessions of a county made regulations as to the expenses to be allowed in cases of felony, and by one of them directed that the taxed bill of costs should be annexed to the order for their payment. These regulations were confirmed by a judge, under 7 Geo. 4, c. 64, s. 26. In a case of felony, the clerk of assize made out the items of the costs allowed, and on the other half of the same sheet of paper wrote the order for the payment of their amount. The attorney for the prosecution tore off the first half of the paper which contained the items, and presented the other half to the county treasurer for payment. The treasurer refused to pay:—Held, that on account of the mutilation of the order the treasurer was not indictable for this refusal. Reg. v. Jones, 9 C. & P. 401; 2 M. C. C. 171.

If, on an indictment for disobey-

ing an order of justices, in not abating a nuisance under the building act, it appears to have been founded on an order made in a case in which the justices had no jurisdiction, the judge at nisi prius will direct an acquittal, although the defect appears on the record. Rex v. Hollis, 2 Stark, 536—Abbott.

If there is a positive averment of disobedience of an order of a court of competent jurisdiction, an indictment is good, without a direct allegation of that which is the foundation of such jurisdiction; nor can a defendant otherwise avail himself, either at the trial or elsewhere, but by shewing a want of jurisdiction in the conrt. Rev. v. Mytton, Cald. 536; 1 Bott's P. L. 428, n.; 4 Dougl. 333; 3 Esp. 200, n.

Upon the trial of an indictment for disobeying an order of justices, the recital upon the face of the order of the facts giving the magistrates jurisdiction is not evidence of the existence of such facts; nor is the setting out of the order in hec verba in the indictment a sufficient allegation of the truth of the facts recited therein. Rex v. Gilkes, 2 M. & R. 454; 8 B. & C. 439; 3 C. & P. 52.

An indictment lies against the president and stewards of a friendly society for disobeying an order of justices addressed to them to re-admit a member, though it is sworn that the power of doing so is not in the president and stewards, but in a committee. Rex v. Wade, 1 B. & Ad. 861.

An indictment against overseers, on 4 & 5 Will. 4, c. 76, s. 47, for not accounting to the auditors of a union upon request, on a day appointed by him, is bad, unless it appears that there was some rule, order or regulation of the commissioners, that the overseers should account upon such request. Reg. v. Crossley, 2 P. & D. 319; 10 A. & E. 132; 3 Jur. 675.

On dismissing an appeal against

a poor-rate, it was ordered by the! sessions, that the appellants, "upon service of the order, or a true copy thereof, should pay to the respondents 91l. for their costs and charges by reason of the appeal." An indictment for disobedience of the order stating that a true copy of it was served on the defendants, who then and there had notice of the order, is sufficient. Reg. v. Mortlock, 7 Q. B. 459; 2 New Sess. Cas. 108; 9 Jur. 621; 14 L. J., M. C. 153.

In order to prove the service of the copy a witness was called, who stated, that the order, having been drawn up from the minutes of the sessions on paper, and signed by the clerk of the peace, was read over by him to each of the defendants, whom he at the same time served with a true copy of it:— Held, sufficient; and that it was not necessary to give notice to produce the copy served in order to let in such evidence. Ib.

Held, also, that it was no objection to the order, that the amount of costs, having in the meantime been taxed by the clerk of the peace, was inserted in the order at an adjourned sessions, as the circumstances of the case warranted the conclusion that the parties assented to such a course. Ib.

The general rule that an indictment, and not a mandamus, is the proper mode of enforcing obedience by a ministerial officer to an order of sessions, does not prevail where the court sees that the ministerial officer is put forward merely as a nominal party, and that other persons are there who are to be compelled to perform the duty. v. Wood Ditton, 18 L. J., M. C. 218 –Q. B.

Under the 7 & 8 Vict. c. 101, an order in bastardy, invalid on the face of it, was made, and afterwards superseded, by the same magistrates; and, upon a fresh application, a second order was made, against which there was no appeal: | 4 B. & S. 947; 9 Cox, C. C. 433;

—Held, that the second order was valid; and an indictment for disobedience to such order was upheld. Reg. v. Brisby, 3 New Sess. Cas. 591; T. & M. 109; 1 Den. C. C. 416; 13 Jur. 520; 18 L. J., M. C.

### (c) Quashing.

When.]—By 14 & 15 Vict. c. 100, s. 25, "every objection to any "indictment for any formal defect "apparent on the face thereof shall "be taken, by demurrer or motion, "to quash such indictment, before "the jury shall be sworn, and not "afterwards."

The Queen's Bench will not quash or stay proceedings on an indictment, if there is no obvious defect upon the face of the indictment. Reg. v. Burnby, 5 Q. B. 348; D. & M. 362; 8 Jur. 240; 13 L. J., M. C.

An indictment for perjury committed upon an examination before a surveyor-general of the customs did not aver that it was preferred under the direction of the commissioners, under 3 & 4 Will. 4, c. 53, s. 112, and a motion was made to quash the indictment or to stay proceedings, upon an affidavit that such direction had not been given. The court refused to interfere summarily. Ib.

Two indictments, the one for misdemeanor, the other for felony, had been removed into the Queen's The court refused to quash them upon an affidavit stating that they both related to the same transaction. Reg. v. Stockley, 2 G. & D. 728 : 3 Q. B. 238.

Where a clear defect of jurisdiction appears on the face of an indictment, or is shewn by affidavit, the court will, on the application of a defendant, quash the indictment after he has pleaded. In a doubtful case the court will exercise its discretion, and leave him to his remedy by writ of error. Reg. v. Heane,

115; 9 L. T., N. S. 719.

A rule to quash an indictment for informality at the instance of the prosecutor, is absolute in the first instance, although the defendant has removed it by certigrari, and has not yet appeared and pleaded. Reg. v. Stowell, 1 D., N. S. 320; 5 Jur. 1010—B. C.

An order of quarter sessions, brought up by certiorari, appeared to be an order quashing an indictment containing counts for forcible entries, assaults and a riot:-Held, first, that the sessions, having jurisdiction over the subject-matter of the indictment, had jurisdiction to quash it. Reg. v. Wilson, 6 Q. B. 620; 1 New Sess. Cas. 427; 8 Jur. 1069.

Held, secondly, that the court would not inquire, on this proceeding, whether the indictment was properly quashed; but that the proper way of raising such a question was by a writ of error.

But an indictment for forgery found at the quarter sessions is a nullity, and therefore, where indictments for forging requests for the delivery of goods had been found at the quarter sessions, and transmitted to the assizes, the judge ordered that they should be quashed and new indictments prepared at the assizes. Reg. v. Rigby, 8 C. & P. 770—Erskine.

The court refused to quash upon motion an indictment for selling by Rex v. Crookes, 3 false weights. Burr. 1841.

Or an indictment against several for entering a lead mine and carrying away lead, on the ground that it was a mere trespass. Johnston, 1 Wils. 325.

But an indictment for converting a house into an hospital for taking in and delivering lewd, idle and disorderly unmarried women, was quashed. Rex v. Macdonald, 3 Burr. 1645.

The court will not on the appli-

10 Jur., N. S. 724; 33 L. J., M. C. | cation of the defendant, quash an indictment for perjury. An indictment cannot be quashed in part. Reg. v. Withers, 4 Cox, C. C. 17.

Where an indictment at common law for disobeying an order of sessions for the maintenance of a bastard child, was defective, but only on points which rendered it bad on demurrer, the court refused to interfere by quashing it. Reg. v. Taylor, 9 D. P. C. 600; 5 Jur. 679.

Terms. —Terms may be imposed on a prosecutor before he is allowed to quash his own indictment. Rex v. Webb, 3 Burr. 1468; 1 W. Bl. 460.

After judgment on demurrer, an indictment cannot be quashed at the instance of the prosecutor. Reg.v. Smith, 2 M. & Rob. 109—Coleridge.

An indictment against a defendant, standing first in order in the paper, was moved to be quashed on the usual terms; but the court only allowed it to be quashed on disclosing the name of the prosecutor, and that the substituted indictment should stand in the same situation as the first would have done. Rex v. Glenn, 3 B. & A. 373.

The court will not quash a defective indictment on motion of the prosecutor, after plea pleaded, before another good indictment is Rex v. Wynn, 2 East, 226.

A person who has pleaded to an indictment which is invalid, on account of its having been found upon the testimony of witnesses not duly sworn to give evidence, may be required to plead to another indictment for the same offence, without the first indictment being quashed by the court. Rex v. Chamberlain, 6 C. & P. 93—Little-

A., being indicted for perjury at the spring assizes, 1843, at those assizes entered into recognizances to try at the summer assizes, 1844; but it being discovered before that time that the indictment was defective, another indictment was preferred and found at those assizes, on which the prosecutor wished the defendant to be tried:—Held, that the defendant was entitled to have the first indictment disposed of before he could be tried on the second; but the judge quashed the first indictment upon the terms of the prosecutor paying the defend-ant his costs of the traverse and recognizance, and the defendant proceeding to trial on the second indictment without traversing. v. Dunn, 1 C. & K. 730—Wightman.

### (d) Trial when Indictment is not good.

A judge may refuse to try an indictment clearly bad in point of law. An indictment for perjury, not averring the matters falsely sworn to be material, nor shewing them to be so, is within this authority. Rev v. Tremain, 5 D. & R. 413; Rev v. Tremearne, 5 B. & C. 761; R. & M. 147; S. P., Rex v. Hepper, R. & M.

Counsel are not allowed to argue at length the invalidity of an indictment for the purpose of inducing the court to refuse to try it. But it is sometimes convenient for counsel to suggest a point on which an indictment is clearly bad, to save the time of the court. Rex v. Abraham, 1 M. & Rob. 7-Tenterden.

A judge at Nisi Prius has no jurisdiction to try an indictment for perjury at common law found at the quarter sessions, and removed by certiorari into the Queen's Bench; an indictment so found being void. Rex v. Haynes, R. & M. 298-Gaselee.

## (e) Finding.

An indictment consisting of two counts, one for a riot, indorsed by the jury ignoramus, the other for "ty by false pretences, keeping a

an assault, returned billa vera, is good. Rex v. Fieldhouse, Cowp.  $reve{3}25.$ 

An allegation in an indictment, "that at the general quarter sessions of the peace holden at U., in and for the county of M., on Monday, the 10th of July, 1826, before certain of his majesty's justices of the peace assigned &c., a certain bill of indictment against S. H. G. was duly preferred and found," is only proved by a regular record of the indictment and caption; and an examined copy of the mere indictment without any caption, together with the minute book of the sessions, produced by the deputy clerk of the peace, and from which he reads entries in his own handwriting shewing the time and place of holding the sessions, is not sufficient, although no record in fact has been drawn up. Rex v. Smith, 8 B. & C. 341.

### (f) Ignoring.

If the grand jury at the assizes or sessions has ignored a bill, they cannot find another bill against the same person for the same offence at the same assizes or sessions; and if such other bill is sent before them they should take no notice of it. Reg. v. Humphreys, Car. & M. 601 -Patteson; S. P., Reg. v. Austin, 4 Cox, C. C. 385; see contrà, Reg. v. Newton, 2 M. & Rob. 503—Wight-

But a prisoner, who had been arrested in Canada under the Colonial Arrest Act, 6 & 7 Vict. c. 34, s. 5, upon a charge of burglary, for which the bill was ignored, was allowed to be arraigned upon another charge. Reg. v. Phillips, 1 F. & F. 105— Erle.

## (g) Previous binding of Prosecutor.

By 22 & 23 Viet. c. 17, s. 1, "no " bill of indictment for perjury, sub-"ornation of perjury, conspiracy, " obtaining money or other proper-

"gambling house, keeping a disor-"derly house, and any indecent as-"sault, shall be presented to or found " by any grand jury, unless the pros-"ecutor or other person presenting "such indictment has been bound "by recognizances to prosecute or "give evidence against the person "accused of such offence, or unless "the person accused has been com-"mitted to or detained in custody, "or has been bound by recogniz-"ance to appear to answer to an "indictment to be preferred against "him for such offence, or unless "such indictment for such offence, "if charged to have been commit-"ted in England, be preferred by "the direction or with the consent "in writing of a judge of one of "the superior courts of law at "Westminster, or of the attorney-"general or solicitor-general for "England, or unless such indict-"ment for such offence, if charged "to have been committed in Ire-"land, be preferred by the direc-"tion or with the consent in writing "of a judge of one of the superior "courts of law in Dublin, or of the "attorney-general or solicitor-gen-"eral for Ireland, or (in case of an "indictment for perjury) by the di-"rection of any court, judge or pub-" lie functionary authorized by  $\overline{14}$  & "15 Vict. c. 100, to direct a prose-"cution for perjury." By s. 2, "where any charge or

" complaint shall be made before any "one or more justices of the peace "that any person has committed " any of the offences aforesaid with-"in the jurisdiction of such justice, "and such justice shall refuse to "commit or to bail the person "charged with such offence to be "tried for the same, then in case "the prosecutor shall desire to pre-"fer an indictment respecting the " offence, it shall be lawful for the "justice, and he is required to "take recognizance of such pros-"ecutor to prosecute the charge or "complaint, and to transmit such |

"recognizance, information and de"positions, if any, to the court in
"which such indictment ought to
"be preferred, in the same manner
"as such justice would have done
"in case he had committed the per"son charged to be tried for such
"offence."

Vexatious indictments.]—The 30 & 31 Vict. c. 35, ss. 1, 2, "limit "the operation of the 22 & 23 Vict. "c. 17, as to the presentment of "bills of indictment mentioned in "this act, containing different "counts."

It is sufficient if the consent of the judge to the prosecution is given in writing; and no previous summons of or notice to the party, or even an affidavit of the facts, is necessary. Reg. v. Bray, 3 B. & S. 255; 9 Cox, C. C. 215; 32 L. J., M. C. 11; 11 W. R. 7; 7 L. T., N. S. 248.

The court will not interfere with the exercise of the discretion of the judge under this act. *Ib*.

It is not necessary that the indictment should aver that the conditions imposed by 22 & 23 Vict. c. 17, s. 1, had been performed; e. g., that it had been preferred by the direction or with the consent of a judge, or of the attorney or solicitor-general. Knowlden v. Reg. (in error), 5 B. & S. 532; 9 Cox, C. C. 483; 10 Jur., N. S. 1177; 33 L. J., M. C. 219; 12 W. R. 957; 10 L. T., N. S. 691.

Three persons were severally bound by recognizances to appear at the next session of the Central Criminal Court, and there surrender themselves, and plead to such indictment as might be found against them for or in respect of a charge of conspiracy to cheat and defraud. The prosecutors were also bound over to appear at such next session, and to prefer, or cause to be preferred, a bill of indictment against the persons accused of the offence of conspiracy, and duly to prosecute

such indictment and give evidence upon that count could not stand. thereon. At the next session an indictment was preferred and found, and the defendants surrendered: but in consequence of the absence of a material witness for the prosecution the trial was put off, and the recognizances duly respected until the next session. Before the next session the solicitor-general directed an indictment for a conspiracy to be preferred against the three defendants and a fourth person, and a second indictment was preferred and found against them all, upon which the original defendants appeared, A plea of but refused to plead. not guilty was entered for them, and they were found guilty and sentenced:—Held, that the indictment was preferred with proper authority, and the recognizances duly entered into, as the charge on which the defendants were tried was the same as that to which the recognizances related, and those recognizances were not exhausted by the first indictment being preferred and the defendants surrendering. Ib.

The provisions of the above statute must be complied with in respect to every count of an indictment to which they are applicable, and any count in which they have not been complied with must be quashed. Reg. v. Fuidge, L. & C. 390; 9 Cox, C. C. 430; 10 Jur., N. S. 160; 33 L. J., M. C. 74; 12 W. R. 351; 9 L. T., N. S. 777.

An indictment contained two counts for obtaining money by false pretences on two several occasions, the requirements of the above statute having been complied with in respect of one of the cases only. prisoner refused to plead, and a plea of not guilty was entered by the direction of the court. Évidence was given upon each count, and the prisoner was convicted upon each:-Held, first, that the second count ought to have been quashed, and that therefore the conviction

Held, secondly, that, as evidence was received which would have been inadmissible upon the trial of the first count alone, the conviction upon that count also was bad. Ib.

A prosecutor who has required the magistrates to take his recognizances to prosecute, on a charge within the 22 & 23 Vict. c. 17, s. 2, when the magistrates have refused to commit the person charged, must either go on with the prosecution or have his recognizances forfeited, as it would defeat the object of the statute if he was allowed to move to have his recognizances discharged. Reg. v. Hargreaves, 2 F. & F. 790 -Keating.

A vestry was empowered, by act of parliament, to indict any person who should stop or impede rights of way in the parish, and to take such other proceedings for opening thereof as should appear expedient: -Held, that the vestry must indict in the name of the Queen, and sue in equity in name of the Attorneygeneral, and that they could not proceed in their own name. Bermondsey Vestry v. Brown, 35 Beav. 226.

A magistrate, if he refuses to commit or bail the person charged, is bound, under 22 & 23 Vict. c. 17, s. 2, to take the recognizances of the prosecutor, if the information discloses any of the offences mentioned in the statute; but he has a discretion to refuse if no indictable offence is disclosed. Wason, Exparte, 4 L. R., Q. B. 573; 38 L. J., Q. B. 302; 17 W. R. 881.

Where, therefore, the offence charged is that of conspiracy, by three persons, two of whom are members of the House of Lords, to deceive the House, and so to prevent the due course of justice and injure and prejudice a third person, by making statements in the House which they knew to be false, the

magistrate is right in refusing to take any proceedings: as members of either House of Parliament are not civilly or criminally liable for any statements made in the House, nor for a conspiracy to make such statements.

### (h) Copy of Indictment.

A prisoner upon his acquittal is not entitled ex debito justitiæ to a copy of his indictment. Rex v. Brangan, 1 Leach, C. C. 27.

Without an order of the court. Morrison v. Kelly, 1 W. Bl. 385.

A prisoner indicted for felony is not entitled to a copy of the indictment found against him, or to a copy of the jury panel, or to copies of the panels returned at former sessions of the court. Reg. v. Mitch-

ell, 3 Cox, C. C. 1.

Where the application is opposed by the attorney-general, the court will not order a party indicted for embezzlement to be furnished with a copy of the indictments found against him, though they are very voluminous and contain a great many counts; but in such case the court will order the accused to be furnished with a full bill of particulars. Reg. v. Hughes, 4 Cox, C. C.

A prisoner charged under 11 & 12 Vict. c. 12, is not of right entitled to a copy of the indictment, nor will the court exercise its discretion in his favour by awarding him a copy ex gratiâ. *1b.* 

But he is so entitled in cases of misdemeanor as a matter of right, without a previous application to Evans v. Philips, 2 the court. Selw. N. P. 952; 1 Phil. Evid. 407.

A prisoner is entitled to a copy of his indictment to enable him to plead autrefois acquit. Rex v. Vandercomb, 2 Leach, C. C. 711; 2 East, P. C. 519.

A copy of an indictment is necessary on the trial of an action for malicious prosecution; and the whether it was obtained by fraud. Caddy v. Barlow, 1 M. & R. 275.

If a plaintiff, in an action for a malicious prosecution, offers to prove at the trial the original record of the indictment and acquittal, or a true copy thereof, such evidence must be received, though there was no order of the court, or fiat of the attorney-general, allowing the plaintiff a copy of such record; but the officer, who without such authority produces the record, or gives a copy of it to the party, is answerable for the contempt of court in so doing: and the judge at nisi prius will not compel him to produce the record in evidence, without such authority. Legatt v. Tollervey, 14 East, 302.

Where a party suing for a malicious prosecution had obtained a copy of the indictment by virtue of the attorney-general's fiat, granted under a misstatement as to the view entertained by the judge before whom the indictment was tried, the court refused to stay the proceedings, or to prevent the plaintiff from using on the trial the copy so obtained. Browne v. Cumming, 5 M.

& R. 118; 10 B. & C. 70.

On an indictment on the prosecution of a private individual for keeping a common gaming-house, the solicitor of the treasury was allowed to have a new record of nisi prius engrossed, and the postea and verdict indorsed from the jadge's notes, on an affidavit that the postea could not be found, and that the solicitor of the treasury was instructed by the secretary of state to ask for the judgment of the court. Rex v. Oldfield, 3 B. & Ad. 659, n.

Where a party has been tried at a court of quarter sessions, which has previously lapsed for want of due adjournment, he has a right to have a record of the proceedings made up by the clerk of the peace, although the object of the application is to enable him to support a plea of autrefois convict. Rex v. court will not entertain the question | Middlesex (Justices), 3 N. & M. 110.

A prosecutor of an indictment for misdemeanor may obtain the usual crown office certificate of his bill having been found, for the purpose of taking out a judge's warrant against the defendant, without obtaining an office copy of the indictment. Rev v. Redfern, 2 A. & E. 387; 4 N. & M. 198.

### (i) Venue.

Statutes.]—By 14 & 15 Vict. c. 100, s. 23, "it shall not be necessa"ry to state any venue in the body
"of any indictment, but the coun"ty, city or other jurisdiction nam"ed in the margin thereof shall be
"taken to be the venue for all the
"facts stated in the body of such
"indictment: provided, that in cas"es where local description is or
"shall be required, such local de"scription shall be given in the
"body of the indictment;

"Provided also, that where an "indictment for an offence, com"mitted in the county of any city
"or town corporate, shall be pre"ferred at the assizes of the adjoin"ing county, such county of the
"city or town shall be deemed
"the venue, and may either be
"stated in the margin of the in"dictment, with or without the
"name of the county in which the
"offender is to be tried, or be stat"ed in the body of the indictment
"by vay of venue.

And by s. 24, "no indictment for any offence shall be held in-"sufficient for want of a proper or perfect venue."

As to jurisdiction of the Central Criminal Court, see 4 & 5 Will. 4, c. 36; 9 & 10 Vict. c. 24, s. 4; of Borough Courts, see 6 & 7 Will. 4, c. 105.

Generally.]—It was sufficient to allege a county as a venue in an indictment, without the addition of the parish, vill or other place. Reg. v. Gompertz, 9 Jur. 401; 14 L. J., M. C. 118—B. C.—Williams.

In an indictment for a misdemeanor, a count containing no statement of venue, either by reference or otherwise, was bad at common law after verdict, though a venue was stated in the margin of the indictment. Reg. v. O'Connor, 5 Q. B. 16; D. & M. 761; 7 Jur. 719; 13 L. J., M. C. 33.

The statement of venue in the margin implies only that the indictment is found by a grand jury of the county named, not (as in civil cases) that the complaint is laid as arising within the county. *Ib*.

Where, in an indictment, after describing the defendant as "of the parish of A. in the county of B.," the offence is laid to have been committed "at the parish aforesaid," omitting any statement of county, this statement of the venue, if defective, was cured by 7 Geo. 4, c. 60, s. 20, after verdict, the case having been tried by a jury of the county first named. Reg. v. Albèrt, D. & M. 89; 5 Q. B. 37; 7 Jur. 741; 12 L. J., M. C. 117.

A prisoner was a travelling salesman, whose duty it was to go into the county of D. every Monday to sell goods and receive money for them there, and return with it to his master in N. every Saturday. He received two sums of money for his master in D., but never returned to render any account. months afterwards he was met by his master in N., who asked him what he had done with the money. The prisoner said he was sorry for what he had done; he had spent it:—Held, that he was rightly indicted in N., there having been evidence to go to the jury of an embezzlement in N. Reg. v. Murdock, 2 Den. C. C. 298; T. & M. 604.

An indictment charged a defendant with obtaining, by false pretences, a post-office order. It was proved that the prosecutor, at the request of the prisoner, transmitted through the post a letter containing

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a post-office order:—Held, that the defendant was properly tried in the county in which that letter was posted, though it was received by the prisoner in a different county. Reg. v. Jones, 4 Cox, C. C. 198; 1 Den. C. C. 551.

An information at common law for a conspiracy between the captain and purser of a man-of-war, for planning and fabricating false vouchers to cheat the crown (which planning and fabrication were done upon the high seas), it is well triable in Middlesex, upon proof there of the receipt by the commissioners of the navy of the false vouchers transmitted thither by one of the conspirators through the medium of the post, and the application there of a third person, a holder of one of such vouchers (a bill of exchange), for payment, which he there received. Rex v. Brisac, 4 East, 164.

In Boroughs.]—Where an offence is committed in a borough which is situate partly in one county and partly in another, the offence is triable in either county, under 14 & 15 Vict. c. 55, s. 19. Reg. v. Gallant, 1 F. & F. 517—Pollock.

Since the 5 & 6 Will. 4, c. 76, all offences committed in Bristol, and the cities and towns named in schedule C., are triable at the assizes for Gloucestershire, and the other counties named in that schedule; and the jurisdiction of the assizes is not affected by the grant of a recorder and a quarter sessions in such cities or towns. Reg. v. Holden, 8 C. & P. 606—Patteson.

If a felony is committed in that part of the county of a town which has been added to it by the Boundary Act, 2 & 3 Will. 4, c. 64, and the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, it is triable in the county of the town. Rex v. Piller, 7 C. & P. 337—Coleridge.

In Counties.]—Three were indicted for feloniously cutting and

wounding. The venue was laid in Glamorganshire, and the indictment was preferred and tried at the assizes for that county. The offence was committed on board an American ship anchored in the Penarth Roads, in the Bristol Channel, three quarters of a mile from the coast of Glamorganshire, at a spot never left dry by the tide, but within a quarter of a mile from the land which is left dry. The place in question is situated between the shore of the county of Glamorgan and two islands, which islands have always been treated as part of the county of Glamorgan. It was also about ten miles from the opposite shore of Somersetshire. The Penarth Roads are ninety miles from the mouth of the Channel:—Held, that the part of the sea where the vessel was when the offence was committed formed part of the body of the county of Glamorgan. Reg. v. Cunningham, Bell, C. C. 72; 5 Jur., N. S. 202; 28 L. J., M. C. 66; 7 W. R. 179; 32 L. T. 287; 8 Cox, C. C. 104.

A., by means of false pretences contained in a letter written and posted by him in the county of C., received in the same county the money obtained by it, which was sent to him by the prosecutor in a The letter containing the false pretences was received by the prosecutor in the county of the borough of C., and the letter enclosing the money was posted in that coun-A. was indicted for obtaining ty. the money by means of the false pretences contained in his letter: -Held, that the venue was well laid in the county of the borough of C. Reg. v. Leech, Dears. C. C. 642; 2 Jur., N. S. 428; 25 L. J., M. C. 77.

Near Boundaries of adjoining Counties.]—By 7 Geo. 4, c. 64, s. 12, "for the more effectual prosecu-"tion of offences committed near "the boundaries of counties, or part-"ly in one county and partly in an"other, it is enacted, that where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties, or within the distance of 500 yards of any such boundary or boundaries, or shall be begun in one county and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any of the said counties, in the same manner as if it had been actually and wholly committed therein."

This means a distance of 500 yards measured in a direct line from the border, and not 500 yards by the nearest road. Reg. v. Wood,

5 Jur. 225—Parke.

An indictment at quarter sessions for the borough of S., stated that A., late of the parish of M., in the county of N., and in the borough of S., at the parish aforesaid, in the borough aforesaid, committed an assault. The marginal venue was "borough of S." The parish is entirely in the county of N., the rest of the borough in the county of L. The defendant removed the indictment by certiorari, and a venire was awarded into the county of L., where he was tried and convicted. The offence was committed in a part of the parish which is in the borough, and within 500 yards from the boundary of L.:—Held, that the venue, as laid, was in N.; and, notwithstanding the proceedings under the certiorari, that the trial was without jurisdiction, and judgment was arrested. Reg. v. Mitchell, 2 Q. B. 636; 2 G. & D. 274; 6 Jur. 505.

Held, also, that for the trial to be good in either county, under 7 Geo. 4, c. 64, s. 12, the offence must have been laid and tried in one and the same county. *Ib*.

A felony committed in a county of a town, the style of which is "town of Kingston-upon-Hull and county of the same town":—Held,

to be sufficiently laid in the venue of an indictment tried in the next adjoining county, as "Yorkshire being the next adjoining county to the town and county of Kingstonnpon-Hull, to wit," the venue being imperfect, there being no "county of Kingston-upon-Hull." Reg. v. Grundy, 2 Cox, C. C. 357—Patteson.

Newcastle-upon-Tyne is a county corporate within 7 Geo. 4, c. 64, s. 12. Errington's case, 2 Lewin, C.

C. 278—Patteson.

The 38 Geo. 3, c. 52, s. 2, which relates to the trial of offences in an adjoining county, only applies to cities and towns corporate which are counties of themselves, and not to towns corporate which are not counties of themselves. Reg. v. Milner, 2 C. & K. 310—Maule.

Where an offence, committed within a limited jurisdiction, is tried in the adjoining county, under 38 Geo. 3, c. 52, s. 2, the venue in the margin of the indictment is properly laid in the county where the offence is tried, and there is no necessity for an averment in the body of the indictment to connect the county of the city or town within which the offence is alleged to have been committed with the venue of the county from which the jury comes. Reg. v. Stokes, 4 Cox, C. C. 451—Williams.

During Journeys or Voyages. —By 7 Geo. 4, c. 64, s. 13, "for "the more effectual prosecution of "offences committed during jour-"neys from place to place, it is en-"acted, that where any felony or "misdemeanor shall be committed " on any person, or on or in respect "of any property in or upon any "coach, waggon, eart or other car-"riage whatever employed in any "journey, or shall be committed "on any person, or on or in respect " of any property on board any ves-"sel whatever employed on any "voyage or journey upon any nav-"igable river, canal or inland navi"gation, such felony or misdemean-" or may be dealt with, inquired of, "tried, determined and punished in "any county, through any part "whereof such coach, waggon, cart, "carriage or vessel shall have pass-"ed in the course of the journey or "voyage during which such fel-"ony or misdemeanor shall have "been committed, in the same man-"ner as if it had been actually "committed in such county;

"In all cases where the side, cen-"tre or other part of any highway, " or the side, bank, centre or other "part of any such river, canal or "navigation shall constitute the "boundary of any two counties, "such felony or misdemeanor may "be dealt with, inquired of, tried, " determined and punished in either " of the said counties, through or "adjoining to or by the boundary "of any part whereof such coach, "waggon, cart, carriage or vessel "shall have passed, in the course "of the journey or voyage during "which such felony or misdemeanor "shall have been committed, in the "same manner as if it had been ac-"tually committed in such county."

This enactment is not confined in its operation to the carriages of common carriers, or to public conveyances, but if property is stolen from any carriage employed on any journey, the offender may, by virtue of the above section, be tried in any county through any part whereof such carriage shall have passed in the course of the journey during which such offence shall have been committed. Req. v. Sharpe, Dears. C. C. 415; 24 L. M. C. 40; 6 Cox, C. C. 418.

Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage, either in the course of the journey through the county of A., or after its arrival at its ultimate destination in the county of B., and the prisoner is indicted in A. under

go to the jury, who is to say whether they are satisfied that the larceny was committed in the course of the journey or afterwards. v. Pierce, 6 Cox, C. C. 117.

The act of stealing must be committed "in or upon the coach," to bring it within 7 Geo. 4, c. 64, s. Sharpe's case, 2 Lewin, C. C. 233—Parke.

On an indictment for assault, it was proved that the assault was committed in one of the carriages of a train running from Brighton to New Cross, and before the train had arrived at the Three Bridges Station, in Sussex. At that station the prosecutrix left the carriage in which she had been riding with the defendant and rode in another carriage of the same train to New Cross, which is within the jurisdiction of the Central Criminal Court: Held, that by the joint operation of the 7 Geo. 4, c. 64, s. 13, and 4 & 5 Will. 4, c. 36, s. 2, the indictment was properly preferred and tried at the Central Criminal Court. v. French, 8 Cox, C. C. 252—Gurney, Recorder.

Central Criminal Court. —By 9 & 10 Vict. c. 24, s. 3, "every writ " of certiorari for removing an in-"dictment-from the Central Crim-"inal Court into the Court of "Queen's Bench shall specify the "county or jurisdiction in which "the same shall be tried; and a "inry shall be summoned, and the "trial proceed in the same manner "in all respects as if the indict-"ment had been originally pre-"ferred in that county or jurisdic-"tion."

An indictment for libel was preferred in the Central Criminal Court, the publication being laid as having taken place "at the parish of St. M., in the county of Middlesex, within the jurisdiction of the Central Criminal Court." The defendant having removed it by certio-7 Geo. 4, c. 64, s. 13, the case must | rari, it came on to be tried at nisi

prius, in Middlesex, when he withdrew his plea of not guilty:—Held, that there was a sufficient venue assigned to the material fact. Reg. v. Gregory, 9 Jur. 593; 14 L. J., M. C. 82; 7 Q. B. 274.

At the Central Criminal Court, a person was indicted for a burglary in a house, which was stated in the indictment to be in the "parish of W." The prosecutor stated that the correct name of the parish was St. Mary W. In 4 & 5 Will. 4, c. 36, s. 2, this parish is called "the parish of W.":—Held, sufficient. Reg. v. St. John, 9 C. & P. 40—Bosanquet and Parke.

Larceny committed on board an English ship lying in a river in China is within the jurisdiction of the Central Criminal Court. Rew v. Allen, 7 C. & P. 664; 1 M. C. C.

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A. was indicted at common law for simple larceny, in stealing in Middlesex a quantity of lead. lead was stolen from the roof of the church of Iver in Buckinghamshire. The prisoner was indicted at the Central Criminal Court, which has jurisdiction in Middlesex (under 4 & 5 Will. 4, c. 36), but not in Buckinghamshire: — Held, that he could not be convicted there, on the ground that the original taking, not being a larceny, but created by statute a felony, the subsequent possession could not be considered a larceny. Rex v. Millar, 7 C. & P. 665—Alderson, Patteson, Park.

An accessory before the fact to a felony committed on the high seas, within the jurisdiction of the Admiralty of England, may be indicted and tried at the Central Criminal Court, by virtue of 7 Geo. 4, c. 64, s. 9, and 4 & 5 Will. 4, c. 36, s. 22, although the person charged as the principal offender has not been committed to or detained in the gaol of Newgate for his offence. Reg. v. Wallace, Car. & M. 200; 2 M. C.

C. 200.

Before 9 & 10 Vict. c. 24, s. 3, an indictment alleging the offence to have been committed at the parish of M., in the county of Middlesex, and within the jurisdiction of the Central Criminal Court, was found at the Central Criminal Court, and removed by certiorari:—Held, that the case was properly tried by a Middlesex jury. Reg. v. Hunt, 10 Q. B. 925; 11 Jur. 822; 17 L. J., M. C. 14.

Change of Venue.]—The court removed an indictment from the Central Criminal Court, and changed the venue from London to Westminster, where it was a prosecution instituted by the corporation of London, for a conspiracy in procuring false votes to be given at an election to the office of bridgemaster. Reg. v. Simpson, 5 Jur. 462—B. C.

It is no ground for removing the trial of an indictment from a large county, that a strong prejudice exists against the defendant in the county town where the trial is to take place. Reg. v. Stephenson, 5

Jur. 341—B. C.

Where the court grants a rule to change the venue in an indictment, on the ground that the defendant is unlikely to have a fair trial where it is laid, the court will change it to some other county on the same circuit. Anon., 6 Jur. 181—

The court will permit a suggestion to be entered on the record, for the purpose of the trial of a misdemeanor into an adjoining county on the application of one of several defendants, although it does not appear that the others have assented to the application, if there is no reason for believing that they dissent. Reg. v. Browne, 6 Jur. 168—Q. B.

Where there was a prospect of a fair trial, the court refused to change the venue, though the witnesses resided in another county. Reg. v. Dunn, 11 Jur. 287-B. C. —Patteson.

The court will not permit the venue in an indictment to be changed for any other cause than the inability to obtain a fair trial in the original jurisdiction. Reg. v. Patent Eurika and Sanitary Manure Company, 13 L. T., N. S. 365—Q. B.

The court has no power to change the venue in a criminal case, nor will they order a suggestion to be entered on the roll to change the place of trial in an information for libel, on the ground of inconvenience and difficulty, in securing the attendance of the defendant's wit-Reg. v. Cavendish, 2 Cox, nesses. C. C. 176.

The court will remove an indictment for a misdemeanor from one county to another, if there is reasonable cause to apprehend or suspect that justice will not be impartially administered in the former county. Rex v. Hunt, 3 B. & A. 444; 2 Chit. 130.

It is no reason for changing the venue in an indictment for a conspiracy in destroying foxes and other noxious animals, that the gentry of the county in which the indictment was found is addicted to foxhunting. Rex v. King, 2 Chit. 217,

Evidence of partiality must be extremely strong to induce the court to change the venue in a criminal information. Rex v. Harris, 3 Burr. 1330; 1 W. Bl. 378.

In felony, the court refused to allow the defendant to enter a suggestion for changing the venue, on the ground of prejudice pervading the county. Rex v. Penpraze, 1 N. & M. 312; 4 B. & Ad. 573.

The court has a discretionary power of ordering a suggestion to be entered on the record of an indictment for felony, removed thither by certiorari, for the purpose of awarding the jury process into a

not be exercised unless it is absolutely necessary for the purpose of securing an impartial trial. Rex v. Holden, 2 N. & M. 167; 5 B. & Ad. 347.

Where a defendant is in custody in the county of A., upon an attachment issuing out of the Court of Exchequer, he may be removed to the county of B., to take his trial upon an indictment found in the latter county. In re Wetton, 1 C. & J. 459.

### (j) Caption.

The caption of an indictment must shew that the court where it was found had jurisdiction. v. Fearnley, 1 Leach, C. C. 425.

An indictment beginning "The jurors of our lady the Queen," is not bad in arrest of judgment. The words, "of our lady the Queen," may be rejected as surplusage, the jurors intended being those mentioned in the caption. Reg. v. Turner, 2 M. & Rob. 214 -Parke. See Broome v. Reg. (in error), 12 Q. B. 834; 12 Jur. 538; 17 L. J., M. C. 152.

In a nisi prius record of an indictment removed by certiorari, the names of the grand jurors who found the indictment need not be inserted in the caption. Davis, 1 C. & P. 470—Park.

It is not necessary to specify the names of the grand jury in the record of the caption of an indictment; it is enough to aver that the indictment, was found by twelve good and lawful men, for the party indicted has an opportunity of resorting to the original caption, where the names of the jurors appear. Aylett v. Rex (in error), 3 Bro. P. C. 529; 6 A. & E. 247, n.

The caption of an indictment on which a defendant had been convicted was drawn up by the clerk of the peace from the minutes of sessions, and returned with the indictment to the crown officer. foreign county; but this power will stated the presentment to be made

by the oaths of A., B., C., D. (naming twelve grand jurors), and others, good and lawful men. A rule was obtained (with a view to a court of error), calling on the clerk of the peace to shew cause why the caption should not be amended by inserting the true names and number of the grand jury sworn. Proof was given by affidavit, that the real number exceeded twenty-five. The clerk did not deny this, but stated that he had no minute or recollection of the names or number:— Held, that the caption was not incorrect in omitting to state the number and all the names of the grand jury; and that, under these circumstances, no alteration could be made in it, and the defendant received judgmeut. Rex v. Marsh, 6 A. & E. 236; 1 N. & P. 187; 2 H. & W. 366.

Semble, per Patteson, J., that an indictment which omits to describe the jurors as jurors of the county is bad. Whitehead v. Reg. (in error), 7 Q. B. 582; 9 Jur. 594; 14 L. J., M. C. 165.

A caption stating that an indictment was found at the sessions holden at Warwick, in and for the county of Warwick, and by adjournment thence at Coventry, in and for the same county, upon the oath of A. B., &c., good and lawful men of the county then and there sworn to inquire for the body of the county, is a sufficient caption under the 5 & 6 Vict. c. 110, annexing the county of the city of Coventry to Warwickshire. Holloway v. Reg. (in error), 17 Q. B. 319; 2 Den. C. C. 287; 15 Jur. 825.

## (k) Several Counts.

Validity.]—Each count in an indictment is, to all intents and purposes, a separate indictment in itself. Latham v. Reg. (in error), 9 Cox, C. C. 516; 10 Jur., N. S. 1145; 33 L. J., M. C. 197; 5 B. &

S. 635; 12 W. R. 908; 10 L. T., N. S. 571.

Where, therefore, it appeared by the record, that the defendants pleaded not guilty generally to an indictment containing two counts, and that the jury found a verdict of guilty upon the one count, but it did not appear that they found any verdict upon the other:—Held, that the conviction and judgment upon the one were, nevertheless, good. Ib.

A prisoner was arraigned upone an indictment, containing one count for felony and one for misdemeanor; and, having pleaded not guilty, was duly tried and convicted of felony:

—Held, that the misjoinder was no objection to the conviction. Reg. v. Ferguson, 6 Cox, C. C. 454; 24 L. J., M. C. 61.

Adding.]—Where the counsel for the prosecution has obtained leave to add a count, on the ground that the indictment, as framed, will not enable him to disclose all the facts of the transaction, the defendant cannot claim to be tried at once upon the indictment already preferred, and the trial must be postponed. Reg. v. Stone, 1 F. & F. 310—Bramwell.

## (1) As to the Allegations.

By 14 & 15 Vict. c. 100, s. 24, "no indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words as appears by the record,' or of the words "with force and arms,' nor for want of a proper or formal concurrence continuous of any defection in the addition of any defendant."

If an indictment is in itself good, tautologous words will be rejected as surplusage. Rex v. Morris, 1 Leach, C. C. 109.

A bad indictment may be made

good by rejecting as insensible and useless such words as obstruct the the sense of it. Rex v. Redman, 1 Leach, C. C. 477.

A statement in an indictment may be either according to the fact or the legal operation. Reg. v.

Healey, 1 M. C. C. 1.

The words "as follow, that is to say," when introductory to a recital in an indictment, do not bind the party to an exact and a verbatim recital. Rex v. Hart, 1 Leach, C. .C. 145; 2 East, P. C. 978; 1 Dougl. 193; Cowp. 229; S. P., Rex v. May, 1 Leach, C. C. 192.

Where an evil intent, accompanying an act, is necessary to constitute such act a crime, the intent must be alleged in the indictment, and proved; though it is insufficient to allege it in the prefatory part of the But where the act is indictment. in itself unlawful, the law infers an evil intent, and the allegation of such intent is merely matter of form, and need not be proved by extrinsic evidence on the part of the prosecutor. Rex v. Phillips, 6 East, 464; 2 Smith, 550.

An indictment, which may apply to either of two different definite offences, is bad. Rex v Marshall, 1

M. C. C. 158.

If an indictment has an interlineation, and has a caret at the proper place, where the interlined words are to come in, the court will take notice of the caret, and read the indictment correctly. Rex v. Davis, 7 C. & P. 319—Patteson.

Every indictment must contain a complete description of such facts and circumstances as constitute the crime, without inconsistency or repugnancy. But, except in certain cases, where technical expressions having grown by long use into law are required to be used, the same sense is to be put on the words of an indictment which they bear in ordinary acceptation; and if the sense of any word is in ordinary acceptation

cording as the context and subjectmatter require it to be, in order to make the whole consistent and sensible. The word "until" may therefore be construed either exclusive or inclusive of the day to which it is applied, according to the context and subject-matter. Rex v. Stevens, 5 East, 244; 1 Smith.

After verdict defective averments in a second count of an indictment may be cured by reference to sufficient averments in the first count. Reg. v. Waverton, 2 Den. C. C. 340; 17 Q. B. 562; 16 Jur. 16; 21 L. J., M. C. 7.

An indictment, ungrammatical, is not bad if the real meaning is suf-Reg. v. Stokes. ficiently expressed. 1 Den. C. C. 307.

An indictment charging that defendant made an assault on Henry B., "and him the said William B. did beat, and other wrongs to the said William B. did the damage of the said William B.," is insufficient. Reg. v. Crespin, 11 Q. B. 913; 12 Jur. 433; 17 L. J., M. C. 128.

Since 14 & 15 Vict. c. 100, s. 24, an indictment for a public nuisance needs not conclude ad commune nocumentum. Reg. v. Holmes, Dears, C. C. 207; 17 Jur. 562; 22

L. J., M. C. 122.

Semble, when the title of an act is not correctly set out in an indictment, but the variation from the true title is so small that the court can have no doubt what statute is referred to by the title indicated, no objection can be sustained to the sufficiency of the indictment on account of the variance. Reg. v. Westley, Bell, C. C. 193; 29 L. J., M. C. 35; 5 Jur., N. S. 1362.

In felonies the indictment must allege them to have been done feloniously; and, therefore, where a statute creates a felony, it is not sufficient to charge the offender merely in the terms of the statute. Reg. v. Gray, L. & C. 365; 9 Cox, ambiguous, it will be construed ac- | C. C. 417; 10 Jur., N. S. 160; 33 L. J., M. C. 78; 12 W. R. 350; 9 (m) Description of the Party ac-L. T., N. S. 733.

A prisoner was indicted under 24 & 25 Vict. c. 97, s. 15, with having unlawfully and maliciously damaged, with intent to destroy, certain machines; the word "feloniously" being omitted, the indict-Ib.ment is bad.

An indictment alleging that a cause "came on to be heard and was duly tried by a jury," is sufficient, although no verdict was given, the trial ending in a nonsuit. Reg. v. Bray, 9 Cox, C. C. 218—

Gurney, Recorder.

An indictment, alleging that the defendant "did unlawfully obtain from the said C. C. a cheque for the sum of 8l. 14s. 6d. of the monies of the said W. W.," is a sufficient allegation of the ownership of the cheque. Reg. v. Godfrey, Dears. & B. C. C. 426; 4 Jur., N. S. 146; 27 L. J., M. C. 151.

An indictment charging D. L. as a receiver of stolen goods, "he, the said A. B., well knowing them to have been feloniously stolen," is, in arrest of judgment, a bad indictment, and is not capable of being amended. Reg. v. Larkin, 2 C. L. R. 775; Dears. C. C. 365; 6 Cox, C. C. 377; 18 Jur. 539; 23 L. J., M. C. 125.

A. was charged in one count with stealing goods, and in a second count with receiving the goods "so as aforesaid feloniously stolen." He was convicted on the second count:—Held, that the conviction was good. Reg. v. Huntley, Bell, C. C. 238; 8 Cox, C. C. 260; 6 Jur., N. S. 80; 29 L. J., M. C. 170; 8 W. R. 183; 1 L. T., N. S. 384.

Duplicity in an indictment is no ground of error. Nash v. Reg. (in error), 9 Cox, C. C. 424; 10 Jur., N. S. 819; 33 L. J., M. C. 94; 4 B. & S. 935; 12 W. R. 421; 9 L. T., N. S. 716.

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cused.

By 14 & 15 Viet. c. 100, s. 24, "no indictment for any offence shall "be held insufficient for want of or "imperfection in the addition of any " defendant."

If the name of a prisoner is unknown, and he refuses to disclose it, an indictment against him as a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prison, will be sufficient. Rex v.—, R. & R. C. C. 489.

But an indictment against him as a person to the jurors unknown, without something to ascertain whom the grand jury meant to designate, is insufficient. Ib.

An indictment against A. by the addition of "servant" was ill. Rex

v. Checketts, 6 M. & S. 88.

A woman charged with the murder of her husband was described as "A., the wife of J. O., late of the parish of S., in the county of W., labourer." The judge ordered this to be amended by striking out the word "wife" and inserting the word "widow." Reg. v. Orchard, 8 C. & P. 565—Abinger.

The prosecutor was termed in the indictment J. N. B. esquire: it was proved that his name was J. N. B., but no evidence was given that he was an esquire:—Held, that the court would take notice that esquire was an addition, and not part of the name, and that it was immaterial that such addition should be Reg. v. Keys, 2 proved as laid. Cox, C. C. 225—Wilde.

(n) Allegations of Time and Place.

By 14 & 15 Vict. c. 100, s. 24, " no indictment for any offence shall "be held insufficient for omitting "to state the time at which the of-"fence was committed in any case "where time is not of the essence " of the offence, nor for stating the "time imperfectly, nor for stating "the offence to have been commit"ted on a day subsequent to the "finding of the indictment, or on "an impossible day, or on a day "that never happened."

Where dates in an indictment are laid under a videlicet, the videlicet may be rejected after verdict in order to support the indictment. Ryalls v. Reg. (in error), 11 Q. B. 781; 13 Jur. 259; 18 L. J., M. C.

69—Exch. Cham.

After verdict, to support an indictment, and to shew that the provisions of a statute have been complied with, dates laid under a videlicet will be taken to be true. Reg. v. Scott, 25 L. J., M. C. 128; Dears. & B. C. C. 47; 2 Jur., N. S. 1096.

In an indictment for assault and battery, the only allegation of the year in which the offence was committed was "in the tenth year of our Sovereign Lady Queen Victoria":—Held, that by 7 Geo. 4, c. 64, s. 20, this was no ground of error. Broome v. Reg. (in error), 12 Q. B. 834; 12 Jur. 538; 17 L. J., M. C. 152—Exch. Cham.

The objection that an offence was laid in an indictment to have been committed on a day which had not yet arrived, could only be taken advantage of on demurrer, and could not be taken after a plea of not guilty. Reg. v. Fenwick, 2 C. & K. 915; 4 Cox, C. C. 139—Cresswell.

In an indictment for burglary, it is sufficient to allege that the burglary was committed at a place, naming it, e. g. "at Norton-juxta-Kempsey, in the county aforesaid," without stating the place to be the parish, vill, chapelry, or the like. Reg. v. Brookes, Car. & M. 543—Patteson.

It was no objection on the plea of not guilty that there was no such place in the county as that in which the offence was stated to have been committed, and the fact that there

was no such place in the county could only be taken advantage of by plea in abatement. Rex v. Woodward, 1 M. C. C. 323.

In an indictment, alleging a dwelling-house to be "situate at the parish aforesaid," the parish last mentioned must be intended. Rex v. Richards, 1 M. & Rob. 177—Park.

A house is properly described as in the parish of Birmingham, although for certain ecclesiastical purposes that parish is divided into three divisions, each called a parish. Reg. v. Howell, 9 C. & P. 437—Littledale.

Where time and place are material, the time and place stated will be taken to be the true time and place. Rex v. Napper, 1 M. C. C. 44; S. P., Rex v. Brown, M. & M. 163.

Where a statute makes an offence committed after a given day triable in the county where the party is apprehended, and authorizes laying it as if committed in that county, and does not vary the nature and character of the offence, it is no objection that the day laid in the indiction that the day laid in the indiction that is before the day the statute mentions, if the offence was in fact committed after that day. Rex v. Treharne, 1 M. C. C. 298.

Words of reference, as "there" and "said," in an indictment, will not be referred to the last antecedent, where the sense requires that they should be referred to some prior antecedent. Wright v. Rex (in error), 3 N. & M. 892.

## (o) Name of Party injured.

In General.]—By 14 & 15 Vict. c. 100, s. 24, "no indictment for "any offence shall be held insuffi"cient for that any person men"tioned in the indictment is desig"nated by a name of office, or other "descriptive appellation instead of "his proper name."

A prosecutor may be described by a name he has assumed, although it is not his right name, if he has been known by that name for several previous years. Rex v. Norton, R. & R. C. C. 510.

It is sufficient to describe a prosecutor by the name by which he is commonly and best known. v. Gregory, 2 New Sess. Cas. 229; 8 Q. B. 508; 10 Jur. 387; 15 L. J., M. C. 38.

A foreigner residing in this country, whose name was Charles Frederick Augustus William D'-Este, and who was commonly called the Duke of Brunswick and Luneberg, though not de facto the reigning duke, was sufficiently described as Charles Frederick Augustus William, Duke of Brunswick and Luneberg. Ib.

The question, whether the name of a prosecutor, as set forth in an indictment, and the name as it appears in evidence, are idem sonans, is a matter of fact which is for the jury; and where it is reserved as a question of law, the court cannot say that words spelt differently are the same in sound. Reg. v. Davies, 2 Den. C. C. 231; T. & M. 557; 15 Jur. 546; 20 L. J., M. C. 207.

The prisoners were indicted for stealing certain articles from Richard Henry John Beaumont Mc-Cumming; there was evidence of the prosecutor's surname being Mc-Cumming, but there was no evidence what his christian names were:-Held, that the indictment Reg. v. Dent, was not sustainable. 2 Cox, C. C. 354.

The only evidence of the christian name of the prosecutor was that of a witness who had seen him sign an information, not in the presence of the prisoners, and also the depositions when before the magistrates, in the presence of the prison-The witness knew nothing of the prosecutor's christian name except from having seen him sign his name on those two occasions:-Held, that the witness's evidence

the prosecutor's name. Reg. v. Toole, Dears. & B. C. C. 194; 3 Jur., N. S. 420; 26 L. J., M. C. 79.

Property stolen described in an indictment as belonging to J. H. S., whereas, in fact, the name was H. J. S., is improperly described. v. James, 2 Cox, C. C. 227.

A count in an indictment charged that defendant made an assault upon one "Henry B.," "and him, the said William B., did beat, and other wrongs to the said William B.," did, to the "damage of the said William B." On motion in arrest of judgment, held sufficient. v. Crespin, 11 Q. B. 913.

If the name of the party killed is not known, he may be stated to be "a certain person to the jurors unknown." Rex v. Clark, R. & R. C. C. 358.

The name of John M'Nicoll, signed to a forged instrument, was in the setting out of the forged instrument in the indictment written John M'Nicole:—Held, no variance. Reg. v. Wilson, 2 C. & K. 527; 1 Den. C. C. 284; 17 L. J., M. C. 82; 2 Cox, C. C.426.

A child "not named" is a proper description in an indictment for illtreatment of a child that has not acquired one by baptism or usage. Reg. v. Waters, 2 C. & K. 864; T. & M. 57; 1 Den. C. C. 356; 13 Jur. 130; 18 L. J., M. C. 50.

But "not baptized" would be insufficient. *Ib*.

Bastards.]—A bastard must not be described by his mother's name till he has acquired that name by reputation. Rex v. Clark, R. & R. C. C. 358.

The deceased was an illegitimate child twelve days old, and it was not even suggested that it had been baptized, but the prisoner, its mother, had said that she should like to have the child named Mary Anne, and on two occasions afterwards called the child Mary Anne, was admissible to prove the fact of and on another occasion, Little

Mary. The prisoner's master, who was the father of the child, had stated to one of the witnesses for the prosecution that he was a Baptist. The indictment alleged the child to be "a certain female child, whose name to the jurors was unknown." The prisoner was convicted, and the judges held the conviction to be right. Rew v. Smith, 6 C. & P. 151; 1 M. C. C. 402.

An indictment charged the murder of Eliza Waters. The deceased was the illegitimate child of the prisoner, whose name was Ellen Waters; and a witness said on the trial—"The child was called Eliza; I took it to be baptized, and said it was Eleanor Waters' child:—Held, that it was not sufficient proof that the surname of the deceased was Waters. Rex v. Waters, 7 C. & P. 250; 1 M. C. C. 457.

Peers.]—A peer of Ireland cannot sue or prosecute by his name of dignity, but must be described by his proper name, with the addition of his degree and title. Rex v. Graham, 2 Leach, C. C. 547.

An indictment for manslaughter described the deceased, who was a peer of Ireland, as "H. S., Baron M. of C., in the county of R., in that part of the united kingdom called Ireland." It was proved that H. was his christian name, S. his family surname, and Baron M., &c., his title:—Held, no variance, and that the court was not bound to construe H. S. to be one christian name. Rex v. Brinklett, 3 C. & P. 416.

In an indictment for larceny of goods, the property of a peer who is a baron, the goods may be laid as the goods of G. T. R., Lord D., without styling him Baron D., although the more proper way to describe a peer is by his christian name, and his degree in the peerage, as duke, earl, baron, or the like. Reg. v. Pitts, 8 C. & P. 771—Erskine.

In an indictment for stealing the goods of a peer, it is necessary to describe him by his christian name and title:—describing him by the latter only, as the Earl Cornwallis, is insufficient. Reg. v. Caley, 5 Jur. 709—Taddy, Serjt.

A. and B. were tried on an indictment charging them with having assaulted the gamekeeper of George William Frederick Charles, Duke of Cambridge. At the trial, none of the witnesses could prove the christian names of the duke, but there was evidence that George William were two of his names, and that it was believed there were others:—Held, that the court was not bound, and was perfectly right in refusing to amend the indictment. by striking out the names of Frederick Charles; and that as there was no amendment, and no evidence of the duke's christian names, A. and B. were entitled to an acquittal. Reg. v. Frost, Dears. C. C. 474; 3 Č. L. R. 665; 1 Jur., N. S. 406; 24 L. J., M. C. 116.

Held, also, that the indictment might have been amended before verdict, by striking out all the christian names, and leaving the descriptive appellation, Duke of Cambridge, which would have been a sufficient description. *Ib*.

Corporations. ] — A corporation must prosecute in its corporate name. Rex v. Patrick, 1 Leach, C. C. 253.

# (p) Description of Property or Instrument.

By 14 & 15 Vict. c. 100, s. 7, "whenever it shall be necessary to "make any averment in any in-"dictment as to any instrument, "whether the same consists wholly "or in part of writing, print, fig-"ures, it shall be sufficient to de-"scribe such instrument by any "name or designation by which the "same may be usually known, or

"by the purport thereof, without setting out any copy or fac simile of the whole or any part there of."

By s. 5, "in any indictment for stealing, embezzling, destroying or concealing, or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac simile thereof, or otherwise describing the same or the value thereof."

By s. 18, "in every indictment in "which it shall be necessary to "make any averment as to any "money, or any note of the Bank " of England, or any other bank, it " shall be sufficient to describe such "money, or bank note, simply as "money, without specifying any " particular coin or bank note; and "such allegation, so far as regards "the description of the property, " shall be sustained by proof of any "amount of coin or of any bank " note, although the particular spe-" cies of coin of which such amount "was composed, or of the particu-"lar nature of the bank note, shall "not be proved; and in cases of " embezzlement and obtaining mon-"ey or bank notes by false preten-"ces, by proof that the offender "embezzled or obtained any piece " of coin, or any bank note, or any "portion of the value thereof, al-"though such piece of coin or bank "note may have been delivered to "him in order that some part of the "value thereof should be returned "to the party delivering the same, " or to any other person, and such " part shall have been returned ac-"cordingly."

In an indictment for receiving stolen tin, ingots of tin are properly described as so many pounds weight of tin. *Reg.* v. *Mansfield*, Car. & M. 140—Coleridge.

So it would be proper to describe

a bar of iron as so many pounds weight of iron. Ib.

But if an article has obtained, in common parlance, a particular name of its own, it would be wrong to describe it by the name of the material of which it is composed; thus, it would be a misdescription to describe cloth as so many pounds weight of wool, or sovereigns as so many ounces of gold. Ib.

Substances mechanically mixed should not be described as "a certain mixture consisting of, &c.," but by the names applicable to them before such mixture. Secus, with regard to substances chemically mixed. Reg. v. Bond, 1 Den. C. C. 517—Alderson.

Bank notes are properly described in an indictment for larceny as money, although at the time they were stolen they were not in circulation, but were in the hands of the bankers themselves. *Reg.* v. *West*, 2 Jur., N. S. 1123; 26 L. J., M. C. 6; Dears. & B. C. C. 109.

Instruments need not be set out in an indictment, except where it is material for the court to see that they fall within a particular description. That is not the case where a false pretence is charged. Reg. v. Coulson, T. & M. 332; 1 Den. C. C. 592; 14 Jur. 557; 19 L. J., M. C. 182.

An indictment for burglary charged an intent to steal goods and The jury found that the chattels. prisoner broke into the house with intent to steal certain mortgage deeds. The mortgage deeds were valid subsisting securities for money which the prosecutor had advanced to the prisoner:—Held, that they could not properly be described as goods and chattels, and that the indictment was not proved. Reg. v.Powell, 5 Cox, C. C. 396; 2 Den. C. C. 403; 21 L. J., M. C. 78.

## (q) Value.

By 14 & 15 Vict. c. 100, s. 24, "no indictment for any offence shall

"be held insufficient for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil, in any case where the value or price, or the amount of damage, injury or spoil, is not of the essence of the offence."

By s. 5, "in any indictment for stealing, embezzling, destroying "or concealing, or for obtaining, by "false pretences, any instrument, it "is unnecessary to describe the value thereof."

By 9 & 10 Vict. c. 62, "it shall "not be necessary in any indict." ment or inquisition for homicide "to allege the value of the instrument which caused the death of "the deceased, or to allege that the "same was of no value."

The word "guilder" is sufficiently an English word to justify its use in an indictment as a translation of the Polish word "zlotych," which is also called a guilder and a florin. Rex v. Harris, 7 C. & P. 416.

Where a count stated that the defendant made an assault upon a person who was in lawful possession of goods, under a levy for a specified sum of money for arrears of assessed taxes, with intent unlawfully to force him ont of possession:

—Held, that it was necessary to prove that the specific sum was due, although no sum need have been stated. Rex v. Ford, 4 N. & M. 451.

Although to make a thing the subject of an indictment for larceny, it must be of some value, and stated to be so in the indictment, yet it need not be of the value of some coin known to the law, that is to say, of a farthing at the least. Reg. v. Morris, 9 C. & P. 349—Parke. See 14 & 15 Vict. c. 100, s. 5.

Where value is essential to constitute an offence, and the value is ascribed to many articles collectively, the offence must be made out as M. C. C. 403.

to every one of those articles, the grand jury having ascribed the value only to all those articles collectively. *Rex* v. *Forsyth*, R. & R. C. C. 274.

# (r) Contra Pacem and contra Formam Statuti.

By 14 & 15 Vict. c. 100, s. 24, "no indictment for any offence "shall be held insufficient for want "of the averment of any matter "unnecessary to be proved, nor for "the omission of the words 'against "the peace,' nor for the insertion of "the words 'against the form of "the statute,' instead of 'against "the form of the statute,' or vice "verså."

Where an act of parliament does not create an offence, but alters the punishment for an offence at common law, it is not necessary that the indictment should conclude contra formam statuti. Williams v. Reg. (in error), 10 Jur. 155; 14 L. J., M. C. 164; 7 Q. B. 250.

An indictment preferred at the assizes under the 7 & 8 Vict. c. 2, for a crime committed on the high seas, need not conclude contra formam statuti. Reg. v. Serva, 2 C. & K. 53; 1 Den. C. C. 104.

Where a statute declares an offence and awards a punishment, and by a subsequent act the punishment is altered, the indictment for such offence should conclude against the form of the statutes. Reg. v. Adams, Car. & M. 299—Coleridge.

The omission of contra formam statuti in an indictment for a statutable offence, was good ground for an arrest of judgment, and was not cured by 7 & 8 Geo. 4, c. 64, ss. 20, 21. Reg. v. Radcliffe, 2 M. C. C. 68; 2 Lewin, C. C. 57.

It was an objection to a conviction of manslaughter on an indictment for murder that the indictment does not conclude contra formam statuti. Rex v. Chatburn, 1 M. C. C. 403.

In an indictment for an offence at common law, a conclusion of contra formam statuti might be rejected as surplusage. Rex v. Mathews, 5 T. R. 162; Nolan, 202.

It is an offence at common law to obstruct the execution of powers granted by statute, and an indictment for such offence need not, and ought not, to conclude contra formam statuti. Rev v. Smith, 2 Dougl. 441

Where an indictment set out the title of an old statute agreeably to Ruffhead, which differed from a copy of the act printed by the king's printer, the court refused to direct a nonsuit without proof of an examination of the parliament rolls. Rex v. Barnett, 3 Camp. 344—Ellenborough.

If one statute subjects an offence to a pecuniary penalty, and a subsequent statute makes it felony, an indictment for the felony concluding against the form of the statute (in the singular number only) is right. Rex v. Pim, R. & R. C. C. 425.

# (s) Of joining Offences and Electing.

When Offences may be joined.]—A person may be charged with several offences of the same nature in the same indictment, and the judge will not, in cases of misdemeanor, require the prosecutor to confine himself to one offence. Rex v. Jones, 2 Camp. 131—Ellenborough.

It is no objection in arrest of judgment that the indictment contains several charges of the same nature in the different counts. Young v. Rex (in error), 3 T. R, 98. And see Rex v. Towle, 2 Marsh, 466.

If one endeavours to commit two separate offences, a count in an indictment charging that endeavour may contain those two offences. Rev v. Fuller, 1 B. & P. 181.

Where several felonies are so con-

neeted together as to form part of one entire transaction, evidence of them all may be given, in order to prove a party indicted guilty of one. Rew v. Ellis, 6 B. & C. 145; 9 D. & R. 174.

If several felonies are charged in the same indictment, it is not objectionable, either upon demurrer or in arrest of judgment, for on the face of the indictment every count imports to be for a different offence. Anon., 2 Leach, C. C. 1105, n.

But if it appears hefore plea, or the jury is charged, that they are separate offences, it is usual to quash the indictment, lest it should confound the prisoner in his defence, or prejudice him in his right of challenge. *Ib*.

Two indictments for the same offence, one for the felony under a statute, and the other for the misdemeanor at common law, ought not to be preferred or found at the same time. Rex v. Doran, 1 Leach, C. C. 538.

The application for a prosecutor to elect is an application to the discretion of the judge, founded on the supposition that the case extends to more than one charge, and may therefore be likely to embarrass the prisoner in his defence. Reg. v. Trueman, 8 C. & P. 727—Erskine.

In a case of arson, the indictment contained five counts, each of which charged a firing of a house of a different owner. It was opened, that the five houses were in a row, and that one fire burnt them all. Upon this opening, the judge would not put the prosecutor to elect, as it was all one transaction. *Ib*.

A prosecutor will not be permitted to give in evidence several distinct offences, involving different transactions, under one indictment. Rev v. Young, R. & R. C. C. 280, n.—Le Blanc.

But several offences connected with each other may. *Ib.* And see *Rex* v. *Thomas*, 2 East, P. C. 934.

On an indictment against two, charging them with a joint offence, either may be found guilty; but they cannot be found guilty separately of separate parts of the charge. Rex v. Hampstead, R. & R. C. C.

And if they are found guilty separately, upon a pardon or nolle prosequi as to the one who stands second upon the verdict, the judgment may be given against the other. Ib.

If two men are indicted, and one of them appears to be innocent and the other guilty, but the prosecutor cannot identify them respectively, both must be acquitted. Rex v. Richardson, 1 Leach, C. C. 387.

It is in the discretion of the judge whether he will allow several felonies to be given in evidence under one indictment; where they are, in fact, so mixed as not to be separated without inconvenience, it will be allowed. Reg. v. Hinley, 2 M. & Rob. 524—Maule.

Although evidence offered in support of an indictment for felony may be proof of another felony, that circumstance does not render it inadmissible, if the evidence is otherwise receivable. Reg. v. Dossett, 2 C. & K. 306—Maule.

It is no ground in arrest of judgment, after a conviction for a felony, that the indictment also contains a count for a misdemeanor. Reg. v.Ferguson, Dears. C. C. 427; 6 Cox, C. C. 454; 1 Jur., N. S. 73; 28 L. J., M. C. 61.

It is no ground of objection to an indictment in arrest of judgment that it contains several counts for distinct felonies. Reg. v. Heywood, L. & C. 451; 9 Cox, C. C. 479; 33 L. J., M. C. 133; 12 W. R. 764; 10 L. T., N. S. 464.

The proper course to pursue, when such joinder has a tendency to embarrass a prisoner in his defence, is to apply to the judge either to quash prosecutor to elect on which count he will proceed. Ib.

When the prosecutor must elect. — If two bills of indictment are preferred for the same offence, the one charging it capitally, the other as a misdemeanor, and both are found, the judge will put the party upon his election which to go upon, and direct an acquittal on the other. Rex v. Smith, 3 C. & P. 412-Vaughan.

If an indictment contains a count for robbery, and a count for an assault with intent to rob, the judge will put the prosecutor to his elec-Rex v. Gough, 1 M. & Rob. tion.

71—Park.

Where there are counts in an indictment for forging a bill, acceptance, and indorsement, the prosecutor is not driven to elect on which he will proceed. Rex v. Young, Peake's Add. Cas. 228—Le Blanc.

A prosecutor cannot maintain two indictments for misdemeanor for the same transaction: he must elect to proceed with one and abandon the other. Rex v. Britton, 1 M. & Rob. 297—Patteson.

On an indictment for forgery, if a second uttering is made the subject of a distinct indictment, it cannot be given in evidence to shew a guilty knowledge in a former uttering. Rex v. Smith, 2 C. & P. 633—

Vaughan.

A prisoner was indicted for nightpoaching, and it was proposed to shew that on the occasion in question one of the prosecutor's gamekeepers had lost his coat, and that it was found in the prisoner's house. anotherwas indictment against the prisoner for stealing the coat:—Held, that this evidence was inadmissible, unless the prosecutor consented to an acquittal on the indictment for the larceny. Westwood, 4 C. & P. 547—Patteson.

A. was indicted for shooting at the indictment or to compel the B., a gamekeeper; there being another indictment against A. for night-poaching: — Held, that although both indictments related to the same transactions, yet these were offences quite distinct from each other, and that the prosecutor ought not to be put to his election to go upon one indictment and to abandon the other. Rex v. Handley, 5 C. & P. 565—Parke.

If two were indicted for a conspiracy and for a libel, and at the close of the case for the prosecution, there is evidence against both as to the conspiracy, but no evidence against one of them as to the libel, the judge will put the prosecutor to elect which charge he will go upon before the defendant's counsel enters on the defence. Reg. v. Murphy, 8 C. & P. 297—Coleridge.

An indictment contained counts charging various misdemeanors, amongst them counts for conspiracy. There being no evidence to go to the jury upon the conspiracy only, the prosecution was made to elect upon which count the case should be left to the jury. Reg. v. Braun, 9 Cox, C. C. 284—Martin.

A party was tried upon an incontained two dictment which counts, one for embezzlement, and the other for larceny as a bailee. At the close of the case for the prosecution, it was objected that the indictment was bad for misjoinder of counts, and the court thereupon directed the counsel for the crown to elect upon which count he would proceed, the counsel for the prisoner contending that such a course was inadmissible. The counsel for the crown elected to proceed upon the second count, and on that count the prisoner was convicted:—Held, that the conviction was right. Reg. v. Holman, L. & C. 177; 9 Cox, C. C. 201; 8 Jur., N. S. 1082; 10 W. R. 718; 6 L. T., N. S. 474.

Certain wharfingers and their servants being indicted in various counts for conspiracy to defraud, by

false statements as to goods deposited with them, and insured by the owners against fire; one set of counts being laid with reference to a fire occurring on the 7th of June, 1864, and another, with reference to a fire occurring on the 25th of November, 1864:—Held, that the prosecution must elect on which of the two transactions, in the first instance, to rely. Reg. v. Barry, 4 F. & F. 389—Martin.

A prisoner being charged on several counts with setting fire to a building described as in the occupation of different persons, also with setting fire to goods in a building so described, the prosecutor was not put to elect, as it might be all one act. Reg. v. Davis, 3 F. & F. 19—Wightman.

# As to Larcenies.—See ante, LARCENY.

# (t) Time and Mode of raising Formal Objections.

By 14 & 15 Vict. c. 100, s. 25, " every objection to any indictment " for any formal defect apparent on "the face thereof shall be taken by "demurrer on motion to quash such "indictment before the jury shall be "sworn, and not afterwards; and "every court before whom any such "objection shall be taken for any " formal defect may, if it be thought "necessary, cause the indictment to "be forthwith amended in such par-"ticular by some officer of the court "or other person, and thereupon "the trial shall proceed as if no "such defect had appeared."

By 7 Geo. 4, c. 64, s. 20, "in or"der that the punishment of offend"ers may be less frequently inter"cepted in consequence of technical
"niceties, no judgment upon any
"indictment or information for any
"felony or misdemeanor, whether
"after verdict or outlawry, or by
"confession, default or otherwise,
"shall be stayed or reversed for

"want of the averment of any mat-"ter unnecessary to be proved, nor "for the omission of the words as "appear by the record, or of the "words with force and arms, or of "the words against the peace, nor "for the insertion of the words "against the form of the statute, "instead of the words against the "form of the statutes, or vice versâ, "nor for that any person or persons "mentioned in the indictment of in-"formation is or are designated by a " name of office or other descriptive "appellation, instead of his, her, or "their proper name or names, nor "for omitting to state the time at "which the offence was committed, "in any case where time is not of "the essence of the offence, nor for "stating the time imperfectly, nor "for stating the offence to have "been committed on a day subse-"quent to the finding of the indict-"ment or exhibiting the informa-"tion, or on an impossible day, or " on a day never happened, nor for " want of a proper or perfect venue, "where the court shall appear by "the indictment or information to " have had jurisdiction over the of-"fence."

A defendant in an indictment cannot, after plea, take advantage of any defect which is aided after verdict by 7 Geo. 4, c. 64, s. 20; the only mode of taking advantage of such defects being by demurrer. Reg. v. Ellis, Car. & M. 564; S. P., Reg. v. Law, 2 M. & Rob. 197.

An indictment charged the commission of the offence "in the 10th year of our Sovereign Lady Victoria," not saying "of the reign": -Held, that the objection, if otherwise valid, was cured by 7 Geo. 4, c. 64, s. 20. Brown v. Reg. 3 Cox, C. C. 49; 17 L. J., M. C. 152; 12 Q. B. 834.

### (u) Amendment.

Statutory Power.]—By 14 & 15 Viet. c. 100, s. 1, "whenever on the

"felony or misdemeanor there shall appear to be any variance between "the statement in such indictment, "and the evidence offered in proof "thereof, in the name of any county, "riding, division, city, borough, "town corporate, parish, township, "or place mentioned or described "in any such indictment, or in the "name or description of any person "or persons, or a body politic or cor-"porate, therein stated or alleged "to be the owner or owners of any "property, real or personal, which "shall form the subject of any "offence charged therein, or in the " name or description of any person "or persons, body politic or corpor-" ate, therein stated or alleged to be "injured or damaged, or intended "to be injured or damaged, by the "commission of such offence, or in "the christian name or surname, or "both christian name and surname, "or other description whatsoever "of any person or persons whomso-"ever therein named or described, " or in the name or description of "any matter or thing whatsoever "therein named or described, or in "the ownership of any property "named or described therein, it " shall and may be lawful for the "court before which the trial shall "be had, if it shall consider such " variance not material to the merits " of the case, and that the defend-"ant cannot be prejudiced thereby "in his defence on such merits, to " order such indictment "amended, according to the proof, by " some officer of the court or other " person, both in that part of the in-"dictment where such variance oc-"curs and in every other part of "the indictment which it may be-"come necessary to amend, on such "terms as to postponing the trial to " be had before the same or another "jury, as such court shall think reasonable.

"And after any such amendment "the trial shall proceed, whenever "trial of any indictment for any |" the same shall be proceeded with,

"in the same manner in all respects, "and with the same consequences, "both with respect to the liability " of witnesses to be indicted for per-"jury and otherwise, as if no such "variance had occurred; and in " case such trial shall be had at Nisi "Prins, the order for the amend-"ment shall be indorsed on the " postea, and returned together with "the record, and thereupon such "papers, rolls, or other records of "the court from which such record "issued as it may be necessary to "amend, shall be amended accord-"ingly by the proper officer; and in "all other cases the order for the " amendment shall either beindorsed " on the indictment or shall be en-"grossed on parchment, and filed, "together with the indictment, " among the records of the court.

"Provided, that in all such cases "where the trial shall be so post-" poned as aforesaid it shall be law-"ful for such court to respite the " recognizances of the prosecutor and "witnesses, and of the defendant, "and his surety or sureties, if any, "accordingly, in which case the "prosecutor and witnesses shall be "bound to attend to prosecute and "give evidence respectively, and "the defendant shall be bound to " attend to be tried at the time and "place to which such trial shall be "postponed, without entering into "any fresh recognizances for that "purpose, in such and the same "manner as if they were originally "bound by their recognizances to "appear or prosecute or give evi-"dence at the time and place to "which such trial shall have been " postponed:

"Provided always, that where "any such trial shall be to be had "before another jury, the crown "and the defendant shall respect-"ively be entitled to the same chal-"lenges as they were respectively "entitled to before the first jury

"was sworn."

Validity of Verdicts and Judgments after Amendment.]—By s. 2, "every verdict and judgment "which shall be given after the "making of any amendment under "the provisions of the act shall be "of the same force and effect in "all respects as if the indictment "had originally been in the same form in which it was after such "amendment was made."

Form of Records after Amendment.]—By s. 3, "if it shall be." come necessary at any time for "any purpose whatsoever to draw "up a formal record in any case "where any amendment shall have been made under the provisions of the act, such record shall be drawn up in the form in which the indictment was after such amendment was made, without "taking any notice of the fact of such amendment having been "made."

On Demurrer or Motion to quash Indictment. —By s. 25, "every ob-"jection to any indictment for any "formal defect apparent on the "face thereof shall be taken, by " demurrer or motion to quash such "indictment, before the jury shall "be sworn, and not afterwards; "and every court before which any "such objection shall be taken for "any formal defect may, if it be "thought necessary, cause the in-"dictment to be forthwith amend-"ed in such particular by some "officer of the court or other per-" son, and thereupon the trial shall "proceed as if no such defect had " appeared."

Meaning of Indictment.]—By s. 30, "the word indictment includes "information, inquisition, and pre"sentment as well as indictment,
"and also any plea, replication, or 
"other pleading, and any Nisi Pri"us record."

Amendment.]—"Whereas a fail-"ure of justice frequently takes "place in criminal trials by reason "of variances between writings "produced in evidence and the re-"cital or setting forth thereof in "the indictment or information, "and the same cannot now he "amended at the trial except in "cases of misdemeanor, for remedy "thereof, be it enacted, that it shall "and may be lawful for any court "of over and terminer and general "gaol delivery, if such court shall " see fit so to do, to cause the in-"dictment or information for any "offence whatever, when any vari-"ance or variances shall appear "between any matter in writing or "in print produced in evidence and "the recital or setting forth thereof "in the indictment or information "whereon the trial is pending, to "be forthwith amended in such "particular or particulars by some "officer of the court, and after such "amendment the trial shall proceed "in the same manner in all re-"spects, both with regard to the "liability of witnesses to be in-"dieted for perjury and otherwise, "as if no such variance or vari-"ances had appeared" (11 & 12 Vict. c. 46, s. 4.) By 12 & 13 Vict. c. 45, s. 10,

"every court of general or quarter "sessions of the peace, on the trial "of any offence within its juris-"diction, whenever any variance "or variances shall appear between "any matter in writing or in print, "produced in evidence, and the re-"cital or setting forth thereof in "the indictment, shall have the "same power in all respects to "cause the indictment to be amend-"ed, which is given to courts of "oyer and terminer and general "gaol delivery, with regard to of-"fences tried before such last-men-"tioned courts by virtue of the 11 " & 12 Vict. c. 46, s. 4, and after "such amendment the trial shall "proceed in the same manner in

"all respects both with regard to "the liability of witnesses to be in-"dicted for perjury and otherwise, as if no variance or variances had appeared."

Exercising.]—As a general rule, a judge on the trial of an indictment will not allow an amendment to be made after the counsel for the defence has addressed the jury. Reg. v. Rymes, 3 C. & K. 326—Williams. But see Reg. v. Fullarton, 6 Cox, C. C. 194—Ir. C. C. R.

The proper course is for the prosecutor's counsel to adduce all his evidence and ask for the amendment before he closes his case, and if the amendment is made the prisoner's counsel addresses the jury on the indictment as amended. *Ib*.

An amendment in the name of the owner of stolen property may be made at the trial. *Reg.* v. *Vincent*, 2 Den. C. C. 464.

Where stolen property has been laid in a wrong person, the indictment may be amended, even after the counsel for the prisoner has addressed the jury and closed his case. Reg. v. Fullarton, 6 Cox, C. C. 194—Ir. C. C. R.

A judge has power to amend the description of an act of parliament in an indictment. *Reg.* v. *Westley*, Bell, C. C. 193; 29 L. J., M. C. 35; 5 Jur., N. S. 1362.

The court will not amend an indictment by striking out the word "feloniously," and thereby convert the charge into a misdemeanor, where the document given in evidence to sustain a charge of forgery will not sustain the charge of felony, although evidence of a common law misdemeanor. Reg. v. Wright, 2 F. & F. 320—Hill.

A. and B. were indicted for assaulting a gamekeeper, they being unlawfully upon land in the occupation of one "George William Frederick Charles Duke of Cambridge." A witness proved that "George William" were two of

the duke's christian names, and that he had other christian names, which, however, were unknown to the witness. The court of quarter session refused to amend by striking out the words "Frederick Charles," and left it to the jury to say whether they were satisfied, upon the evidence, of the identity of the Duke of Cambridge as occupier of the land in question: — Held, first, that the power of amendment was in the discretion of the sessions. and that such power should be exercised before a case goes to the jury; and that the court, therefore, could not say that the sessions were bound to amend. Reg. v. Frost, Dears. C. C. 474; 6 Cox, C. C. 526; 1 Jur., N. S. 406; 24 L. J., M. C. 116.

Held, secondly, that the sessions were right in refusing to make the amendment asked, but that they might have amended by striking out all the christian names; the indictment could then have been sustained, as containing a sufficient descriptive appellation of the prosecutor. Ib.

Held, thirdly, that as the indictment stood, it contained matter of description which ought to have been proved; and as it was not, the sessions ought to have directed an

acquittal. Ib.

In an indictment for larceny of property belonging to a banking company, the property was laid to be in the manager of the bank. The banking business was carried on by a joint-stock banking company, and there were more than twenty partners or shareholders; but no registration, or appointment of a public officer, under 7 Geo. 4, The judge c. 46, was proved. amended the indictment by stating the property to be in "W." (one of the partners) "and others": Held, that under 7 Geo. 4, c. 64, s. 14, the amendment was right. Reg. v. Pritchard, 8 Cox, C. C. 461; L. & C. 34; 7 Jur., N. S. 557; 30 L. that the goods were stolen. The

J., M. C. 169; 9 W. R. 579; 4 L. T., N. S. 340.

When an indictment is amended at the trial, the court of appeal cannot consider it as it originally stood, but only in its amended form. Reg. v. Webster, L. & C.

An indictment charged with the intent to kill and murder Annie Welton. The prosecution failed to prove the child had ever borne such a name:—Held, that the indictment might be amended. Reg. v. Welton, 9 Cox, C. C. 297—Byles.

A feme sole, having recovered judgment in a county court, afterwards married, and subsequently to her marriage issued a judgment summons out of the London Small Debts Court, within the jurisdiction of which the defendant was residing. The judgment summons was headed as in the plaint in the county court, and objections being thereunto taken, on behalf of the defendant, the judge amended, by striking out the name of the original plaintiff, and substituting the names of her husband and herself as plaintiffs. The defendant was then examined, and at the conclusion of his evidence the judge directed him to be prosecuted for perjury, on which charge he was afterwards tried and found guilty:— Held, that the amendment was not within the jurisdiction of the judge, and that there being no cause in the altered name in existence, the conviction could not be supported. Reg. v. Pearce, 9 Cox, C. C. 258; 3 B. & S. 531; 9 Jur., N. S. 647; 11 W. R. 235; 7 L. T., N. S. 597.

An erroneous entry of the verdict in criminal cases may be amended from the judge's notes, but not from the recollection of the judge. Reg. v. Virrier, 12 A. & E. 317; 4 P. & D. 161.

An indictment for receiving, alleged by mistake that the prosecutor, instead of the prisoner, knew defect was not noticed till after verdict, when a motion was made in arrest of judgment; but the court then amended the indictment:—Held, that the amendment could not be made after verdict; and that the indictment was bad in arrest of judgment. Reg. v. Larkin, 6 Cox, C. C. 377; 23 L. J., M. C. 125; Dears. C. C. 365; 2 C. L. R. 775.

Indictment for obstructing a footway leading from A. to G. The footway was for half a mile from its commencement, as described in the indictment, a carriage-way; the obstruction was in the part beyond:
—Held, that this was a misdescription, which ought to be amended under 14 & 15 Vict. c. 100, s. 1.

Reg. v. Sturge, 3 El. & Bl. 734; 18 Jur. 1052; 23 L. J., M. C. 172.

The judge has power, under 14 & 15 Vict. c. 100, s. 1, to amend an indictment for perjury, describing the justices before whom the perjury was committed as justices for a county, where they are proved to be justices for a borough only. Reg. v. Western, 1 L. R., C. C. 122; 37 L. J., M. C. 81; 18 L. T., N. S. 299; 16 W. R. 730; 11 Cox, C. C. 93.

The secretary of a friendly society, of which A. B. and others were the trustees, was charged with embezzling money belonging to the society. In the indictment the property was laid as "of A. B. and others," without alleging that they were trustees of the society:—Held, that the indictment might be amended by adding the words "trustees of," &c. Reg. v. Marks, 10 Cox, C. C. 367—Chambers, C. S.

# (v) Nolle prosequi.

A nolle prosequi can only be entered by the authority of the attorney-general. Reg. v. Dunn, 1 C. & K. 730—Wightman; S. P., Elworthy v. Bird, 9 Moore, 430; 2 Bing. 258.

Where, in an indictment for per-

jury, the attorney-general enters a nolle prosequi on the part of the crown, he does so on his own responsibility, and the Queen's Bench will not interfere. Reg. v. Allen, 9 Cox, C. C. 120.

An attorney-general is at liberty, after having entered a nolle prosequi on an indictment, to file an exofficio information for the same offence; and the pendency of an indictment or an information is not a good plea to an information subsequently filed against the same party for the same offence. Reg. v. Mitchel, 3 Cox, C. C. 93.

#### 2. Central Criminal Court.

(a) Jurisdiction.

(4 & 5 Will. 4, c. 36; 9 & 10 Vict. c. 24.)

19 & 20 Vict. c. 16, "enables "the Court of Queen's Bench to "order indictments against persons "charged with indictable offences "committed out of the jurisdiction of the Central Criminal Court, to be removed by certiorari, and to be tried thereat."

When, after the defendant is ordered to be tried under the above act at the Central Criminal Court, the Court of Queen's Bench will not make it a condition under sect. 24 that the prosecutor shall furnish the defendant with evidence which, it is suggested, has been obtained by the prosecutor since the taking of the depositions. Reg. v. Palmer, 5 El. & Bl. 1024.

It is not a sufficient ground for the removal of an indictment, under 19 & 20 Vict. c. 16, s. 3, for trial at the Central Criminal Court, that, on the occasion of the first apprehension of the prisoner, some months before the time for trial, articles and paragraphs had appeared in some papers of the particular town in which the trial would take place, of a nature likely to create prejudice against him, and that the case had become matter of conversation amongst certain classes in that town, it not appearing either that those papers had a general circulation in the county, or that the case had become matter of general conversation in the county, as the jurors would be taken from the county as well as the town. Reg. v. Ruxton, 11 W. R. 209— Q. B.

In a prosecution at the Central Criminal Court for publishing a libel, it is not necessary, for the purpose of giving jurisdiction, that the prosecutor should have entered into recognizance, or that the defendant should have been in custody, or be bound to appear according to 4 & 5 Will. 4, c. 36, s. 13. Reg. v. Gregory, 7 Q. B. 274; 9 Jur. 593; 14 L. J., M. C. 82.

A. was indicted at the Central Criminal Court for forgery. was not shewn either to have committed the forgery, or to have been in custody within the jurisdiction of the court till the moment before his trial, when he surrendered in discharge of his bail:—Held, that he was triable in that court under 11 Geo. 4 & 1 Will. 4, c. 66, s. 21, as being in custody within its jurisdiction. Reg. v. Smythies, 1 Den. C. C. 498; 2 C. & K. 878; T. & M. 195; 19 L. J., M. C. 31.

The Central Criminal Court has jurisdiction to try accessories before the fact to the felony of casting away and destroying a ship on the high seas, on an indictment against principal and accessory, though the principal felon is not amenable to Reg. v. Wallace, 2 M. C. C. R. 200; Car. & M. 200.

A British subject might be indicted at the Central Criminal Court under 9 Geo. 4, c. 31, s. 7, for the murder of a foreigner out of the queen's dominions. Reg. v. Azzopardi, 1 C. & K. 203.

A foreigner, one of the crew of a British ship, committed manslaughter on board a British ship while it was in a tidal river in gestion of the co-defendant's death

France. The ship was in a part of the river where the tide ebbs and flows, and where great ships go:— Held, that the Central Criminal Court had jurisdiction to try the offender. Reg. v. Anderson, 11 Cox, C. C. 198; 17 W. R. 208; 19 L. T., N. S. 400; 38 L. J., M. C. 12; 1 L. R., C. C. 161.

#### 3. Trial.

## (a) Jurisdiction.

Trial. By 30 & 31 Vict. c. 35, s. 10, "the governor of a prison is "to bring up the body of any per-"son indicted without writ of ha-"beas corpus upon the order of a " court of criminal jurisdiction for " trial."

The jurisdiction of a recorder of a borough is not determined or suspended by the arrival of the judges of assize in the same county, and the rule applies equally to the jurisdiction of county justices of the peace; therefore general quarter sessions of the peace for a borough or county may be held concurrently with assizes in the same county, though it would be highly inconvenient to do so. Smith v. Reg. (in error), 3 New Sess. Cas. 564; 13 Jur. 850; 18 L. J., M. C. 207-Q.B.

Where the quarter sessions of a county occur while the judge of assize is proceeding with the trial of prisoners in that county, after the grand jury at the assizes has been discharged, the better course is for the quarter sessions not to proceed with the trial of any prisoners, but to dispose of all their other business, and then to adjourn to a future Anon., 9 C. & P. 790—Coleday. ridge.

One of the two defendants in an indictment for conspiracy died after the venire facias juratores was returnable, and before trial; the other defendant was tried and found guilty: -Held, no mistrial, although no sughad been entered on the record before trial. Reg. v. Kenrick, D. & M. 208; 5 Q. B. 49; 7 Jur. 848; 12 L. J., M. C. 135.

(b) Arraignment and Plea. (7 & 8 Geo. 4, c. 28, s. 1.)

Arraignments may be without holding up the hand. Rex v. Rat-

cliffe, I W. Bl. 3.

Where a prisoner, on being arraigned, stated that he was deaf, on which the indictment was read over to him, and he apparently did not hear it: the judge directed a jury to be empannelled to try whether he stood mute by the act of God or out of malice. Rex v. Halton, R. & M. 78—Gifford.

And his counsel has a right to address the jury and call witnesses for him. Rex v. Roberts, Car. C. L. 57—Park and Abbott.

If a person stands mute upon his arraignment, the court may direct the sheriff to return a jury instanter, to try whether he stands mute obstinately or by the visitation of God; and if they find that he stands obstinately mute, sentence may be passed without further inquiry. Reav. Mercier, 1 Leach, C. C. 183; S. P., Reav. Steel, 1 Leach, C. C. 451.

Semble, that where a prisoner, being called on to plead, remains mute, the court cannot hear evidence to prove that he does so through malice, and then enter a plea of not guilty under 7 & 8 Geo. 4, c. 28, s. 2; but a jury must be empannelled to try the question of malice, and it is upon their finding that the court is authorized to enter the plea. Reg. v. Israel, 2 Cox, C. C. 263.

The 7 & 8 Geo. 4, c. 28, s. 2, authorizing the court to direct a plea of not guilty to be entered for a party who stands mute of malice, or will not answer directly to an indictment, applies to the case of a party who refuses to plead on the ground that he had previously plead-

ed to another indictment for the same offence, but which indictment was not valid in consequence of its having been found upon the testimony of witnesses not duly sworn to give evidence before the grand jury. Rex v. Bitton, 6 C. & P. 92—Littledale.

A prisoner declining to plead to an indictment, the court directed a plea of not guilty to be entered. Reg. v. Bernard, 1 F. & F. 240.

A prisoner being arraigned on two indictments for murder, and having, with apparent intelligence, pleaded to one and declined to plead to the other, the plea of not guilty was entered for him by statute with the assent of his counsel. The case being then opened, and the first witness examined, and it being then set up by his counsel that he was insane, or not in a fit state to be tried:-Held, that the proper time for making that suggestion was before the prisoner pleaded; and, had it been so made, a jury should have been empannelled to try the question whether he was sane and in a fit state to be tried; but as the trial had been begun, and it would be manifestly inconvenient to recommence the trial of the collateral issue, and as, moreover, the evidence as to the prisoner's present sanity was very much mixed up with the general question of his sanity, it was open to the court under 39 & 40 Geo. 3, c. 94, to take the whole of the evidence, and then leave to the jury both questions as to his state of mind at the time of the act and at the time of the trial. v. Southey, 4 F. & F. 864—Mellor.

In criminal cases a defendant cannot plead a special plea in addition to not guilty. Reg. v. Strahan, Paul and Bates, 7 Cox, C. C. 85; S. P., Reg. v. Skeen, 8 Cox, C. C. 143; Bell, C. C. 97; 5 Jur., N. S. 151; 28 L. J., M. C. 91; 7 W. R. 255.

party who refuses to plead on the A prisoner, when called upon to ground that he had previously plead plead to an indictment, stood mute.

A jury was empannelled and sworn to try whether he was mute of malice or by the visitation of God. A verdict of mute of malice having been returned, the court ordered a plea of not guilty to be entered on the record. Reg. v. Schleter, 10 Cox, C. C. 409 — Malcolm, Ker. Com.

## Withdrawing Plea of Not Guilty.

It is purely for the discretion of the judge at the trial, whether a plea of not guilty may be withdrawn or not; and the exercise of such discretion cannot be reviewed upon a case reserved.  $Reg.v.\ Brown$ , 17 L. J., M. C. 135.

Where an indictment has been removed and sent down to trial as a Queen's Bench record, the defendant cannot withdraw his plea of not guilty and plead guilty. Rex. v. Barrett, 2 Lewin, C. C. 264—Alderson.

A prisoner who has pleaded guilty to a charge of larceny, and upon whom sentence has been passed, cannot be allowed to retract his plea and plead not guilty. Sell. 9 C. & P. 346—Mirehouse,

On the trial of an indictment for forgery against two, one of them, after the opening speech for the prosecution, asked to be allowed to withdraw his plea of not guilty and to plead guilty. This was done, and the plea of guilty was recorded. He was then examined as a witness for the prosecution against the other, and swore that he had no knowledge of the instrument being forged. Upon this he was allowed to withdraw his plea of guilty and to plead not guilty, the jury withdrawing their verdict. The trial of the other party was then proceeded with, and, on his acquittal, the one who had withdrawn his plea was put upon his trial. Reg. v. Clouter, 8 Cox, C. C. 237—Bramwell.

## (d) Standing in the Dock.

A person who surrenders to take his trial, on a charge of felony at the assizes, must be tried at the bar of the court, and cannot take his trial at any other part of the court, even with the consent of the prosecutor. Reg. v. St. George, 9 C. & P. 483—Parke.

A merchant was indicted for an offence against the act of parliament prohibiting slave-trading. His counsel applied to the court to allow him to sit by him, not on the ground of his position in society, but because he was a foreigner, and several of the documents in the case were in a foreign language, and it would, therefore, be convenient for his counsel to have him by his side, that he might consult him during his trial:—Held, that the application was one which ought not to be Reg. v. Zulueta, 1 C. & granted. K. 215—Maule and Wightman.

Where a captain in the army surrendered in discharge of his bail to take his trial, for feloniously shooting at another (in a duel), with intent to kill him:—Held, that he must take his place within the dock like all other prisoners charged with felony; but on his expressing a wish to that effect, he was allowed to have three friends to stand beside him there. Reg. v. Douglas, Car. & M. 193—Williams.

But a defendant who surrenders to take his trial on a charge of misdemeanor need not stand at the bar to be tried, but may be allowed a place at the table of the court. Reg. v. Lovett, 9 C. & P. 462—Littledale.

# (e) Reading Indictment.

On a trial for felony the prisoner is entitled to have the indictment read slowly over once, and once Reg. v. Dowling, 3 Cox, C. only. C. 509.

An indictment for perjury, removed by certiorari, came on to be

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tried as a Nisi Prius record. As soon as the jury was sworn, the defendant asked to have the indictment read at length to the court and jury. The judge directed it to be done. Reg. v. Newton, 1 C. & K. 469—Atcherley, Serjeant.

## (f) Separate Trial.

Where several prisoners are jointly indicted, the judge will not allow a separate trial on the ground that the depositions disclose statements and confessions made by one prisoner implicating another, which are calculated to prejudice the jury, and that there is no legal evidence disclosed against the other prisoner. Reg. v. Blackburn, 6 Cox, C. C. 333—Talfourd.

## (g) Right of Acquittal on Indictment of Several.

If several are charged with the same offence, and no evidence is given against one of them, he is entitled to an acquittal before the others are called upon for their defence, to enable them to call him as a witness. Bounty case, 1 East, 313, n. And see Rex v. Rowland, R. & M. 401.

On an indictment against several persons, the counsel for the prosecution has a right, before opening his case, to the acquittal of any defendant he intends to call as a witness. Rex v. Rowland, R. & M. 401—Abbott. And see Rex v. Kroehl, 2 Stark, 343; 11 East, 313, n.; Reg. v. Owen, 9 C. & P. 83.

If two persons are jointly indicted for obstructing a highway, and ou the evidence no joint act of obstruction appears, the judge will, as soon as the case for the prosecution is closed, put the prosecutor's counsel to elect which of them they will proceed against, and then take an acquittal for the other. Rex v. Lynn, 1 C. & P. 528—Littledale.

(h) Postponing or adjourning Trial.

By 14 & 15 Vict. c. 100, s. 26, part of 60 Geo. 3 & 1 Geo. 4, c. 4, "as to the traverse of indictments "in misdemeanors is repealed."

By s. 27, "no person prosecuted "shall be entitled to traverse or "postpone the trial of any indict-"ment against him at any session of "the peace, session of over and ter-"miner or session of gaol delivery: provided always, that if the court, " upon the application of the person "so indicted or otherwise, shall be "of opinion that he ought to be al-"lowed a further time, either to "prepare for his defence or other-"wise, such court may adjourn the "trial of such person to the next "subsequent session, on such terms "as to bail or otherwise as to such "court shall seem meet, and may "respite the recognizances of the "prosecutor and witnesses accord-"ingly, in which case the prosecu-"tor and witnesses shall be bound "to attend to prosecute and give "evidence at such subsequent ses-"sion without entering into any "fresh recognizance for that pur-" pose."

Postponing. —A prisoner's counsel moved to postpone a trial for murder, on an affidavit which stated that one of the witnesses for the prosecution, who had been bound over to appear at the assizes, was absent, and that on cross-examination that witness could give material evidence for the prisoner:-Held, that this was sufficient ground for postponing the trial, without shewing that any endeavour had been made on the part of the prisoner to procure the witness's attendance, as the prisoner might necessarily expect, from his having been bound over, that he would appear. v. *Ma Carthy*, Car. & M. 625— Cresswell.

A defendant in an indictment for

perjury, tried at the sittings in the Queen's Bench, was arrested on the Wednesday before the trial, as he was going to the chambers of his counsel to deliver his brief. case was called on for trial on the Saturday, and the judge would not postpone it unless it could be shewn that the arrest was by collusion with the prosecutor; and the fact that a witness for the prosecution stood by while the arrest took place is not sufficient to raise that inference. Reg. v. Gordon, Car. & M. 410—Denman.

An application to postpone the trial of a prisoner charged with murder, in order to afford an opportunity of investigating the evidence and characters of certain witnesses, who had not been examined before the committing magistrate, but who were to be called for the prosecution to prove previous attempts by the accused on the life of the de-Reg. v. Johnceased, was refused. son, 2 C. & K. 354—Alderson.

If it is moved, on the part of the prosecution in a felony, to put off the trial, on the ground of the absence of a material witness, who has not made a deposition before the committing magistrate, the judge will require an affidavit stating what points the witness is expected to prove, in order that he may form a judgment as to the witness being material or not. Reg. v. Savage, 1 C. & K. 75—Erskine.

An affidavit of a surgeon, that a witness is the mother of an unweaned child, which is afflicted with inflammation of the lungs, and that the child could neither be brought to the assize town nor separated from its mother without danger to its life, is sufficient ground for the absence of the witness, in order to found a motion to postpone the trial. Ib.

A trial for murder was put off until the next assizes, upon an application on the part of the prosecution, material witness to attend, although the witness was not examined before the magistrates, there being an affidavit of a medical man as to an injury to the witness, rendering it, in his opinion, unsafe that he should travel, and this even after the trial had been appointed for a particular day. Reg. v. Lawrence, 4 F. & F. 901—Channell.

Before the spring assizes, 1840, A. was committed to take his trial at those assizes for shooting B. The trial was postponed to the summer assizes, on the ground that B. was too ill from his wounds to be able to attend to give evidence. Before the summer assizes B. died, and at those assizes a true bill for the murder of B. was found against A., and application was made, on the part of the prosecution, to postpone the trial to the next spring assizes, on the ground of the illness of a material witness. The judge granted the application, and held, that A. was not entitled to his discharge under the 7th section of the Habeas Corpus Act. Reg. v. Bowen, 9 C. & P. 509 -Williams.

Where it was stated by the grand jury on their returning a true bill for murder, that an important witness was too ill to give evidence in court, the jury directed two surgeons to see the witness; and on their stating on the voir dire that the witness was too ill to give evidence in court, the judge ordered the trial to be postponed to the next assizes, and the prisoner to be detained in custody. Reg. v. Chapman, 8 C. & P. 558—Abinger.

An issue upon the identity of a person is to be tried instanter. Rex v. *Rogers*, 3 Burr. 1809.

A judge at the assizes may postpone a trial until the next assizes, if he finds the principal witness wholly incompetent to take an oath from ignorance; and may order the witness to be instructed in the mean time by a clergyman in the princion the ground of the inability of a | ples of his duty, and the nature and

1 Leach, C. C. 430.

A motion to put off a trial, on an indictment for felony, cannot be entertained until after plea pleaded. It is a good ground for putting off a trial, that the jury panels at the assizes have been taken from a neighbourhood where an excitement has been raised against the prisoner likely to prevent a fair tri-Reg. v. Bolam, 2 M. & Rob. 192 — Alderson and Parke.

If it is moved on the part of the prosecution in a case of felony to postpone the trial on the ground of the absence of a material witness, the practice, where the absence of the witness can be traced to the acts of the prisoner or his friends, is not to discharge the prisoner from custody, except on very sufficient bail; but where no collusion appears between the absent witness and the prisoner, or his friends, the practice is to discharge the prisoner on his own recognizance. Rex v. Beardmore, 7 C. & P. 497—Patteson.

A defendant indicted for misdemeanors, committed by him in the West Indies in a public capacity, under 42 Geo. 3, c. 85, is not entitled, upon an affidavit in the common form of putting off a trial upon the absence of a material witness, to put off his trial until return made to write of mandamus to the courts abroad, to examine witnesses, which are directed to be issued in such cases at the discretion of the court; but he must lay before the court such special grounds by affidavit, as may reasonably induce them to think that the witnesses sought to be examined are material to his de-But the prosecutor in such case is of course entitled to writs of mandamus for the like purpose. Rex v. Jones, 8 East, 31.

The court will postpone until the next assizes the trial of a prisoner eharged with murder, on an affidavit by his mother that she would be enabled to prove by several witnesses if it appears that the defendant re-

obligation of an oath. Rex v. White, | that he was of unsound mind, and that she and her family were in extreme poverty, and had been unable to procure the means to produce such witnesses, and that she had reason to believe that if time were given to her the requisite funds would be provided. Reg v. Langhurst, 10 Cox, C. C. 353; 4 F. & F. 969—Channell.

The affidavit of the prisoner's attorney, setting forth the information he had received from the mother, was held to be insufficient.

Adjourning. — The judge in a case of felony has no authority to order an adjournment (i. e. to another day) on account of the mere absence of the prosecutor and his Rey. v. Parr, 2 F. & F. witnesses. 861—Wightman.

Or to adjourn a criminal trial when once the jury is sworn. Reg.v. Tempest, 1 F. & F. 381—Watson.

But a prisoner's trial may be adjourned if the case has only been opened by counsel for the prosecution, but not after evidence has Reg. v. Robson, 4 F. been called. & F. 360-Willes.

# (i) Illness of Prisoner during Trial.

If a prisoner indicted for a felony, with whom the jury is charged, is by sudden illness during the trial rendered incapable of remaining at the bar, the jury may be discharged from the trial of that indictment, and the prisoner, on his recovery, tried by another jury. Rex v. Stevenson, 2 Leach, C. C. 546.

#### (j) Trial on a Verdict in a Civil Case.

If a verdict is found for a defendant in an action of slander; on a justification of words of felony, the plaintiff may be arraigned without a grand jury. Cook v. Field, 3 Esp. 133—Kenyon.

In an action for money received,

ceived the money from the plaintiff to carry to a bank, and that instead of so doing he kept it, the judge will leave it to the jury to say, whether he received it with an intent to steal it, and then feloniously converted it; and if the jury finds this in the affirmative, the judge will direct a verdict to be entered for the defendant, and that the defendant shall be tried for the felony on this finding. Prosser v. Rowe, 2 C. & P. 421—Parke.

#### 4. Pleas in Abatement.

The 7 Geo. 4, c. 64, s. 19, "for "preventing abuses from dilatory "pleas, enacts, that no indictment "or information shall be abated by "reason of any dilatory plea of mis-"nomer, or of want of addition, or "of wrong addition of the party of-"fering such plea, if the court shall "be satisfied by affidavit or other-"wise of the truth of such plea; "but in such case the court shall "forthwith cause the indictment or "information to be amended ac-"cording to the truth, and shall "call upon such party to plead "thereto, and shall proceed as if "no such dilatory plea had been " pleaded."

The court will not allow a defective plea in abatement, to an indictment for a misdemeanor, to be amended. Rex v. Cooke, 4 D. &

R. 592; 2 B. & C. 871.

Before this enactment, one indicted for a misdemeanor might plead in abatement a misnomer of his surname—Shakepeare for Shakespeare, which need not be taken for idem sonans; and the plea concluding with praying judgment of the indictment, that he might not be compelled to answer the same, was good. Rev v. Shakspeare, 10 East, 83.

Where a defendant was indicted with an alias dictus, and pleaded in abatement that he was not known by such name, the plea must have been demurred to, or issue taken thereon; and it could not be quash-

ed on motion. Rex v. Clark, alias Jones, 1 D. & R. 43; S. P., Rex v. Cooke, 4 D. & R. 114; 2 B. & C. 618.

Where a defendant pleaded in abatement to an indictment for a misdemeanor, that he was a peer, such plea was bad on demurrer, for not stating that he was a peer of the united kingdom, and shewing in what manner he derived his title. Rew v. Cooke, 4 D. & R. 592; 2 B. & C. 871.

A dilatory plea to an indictment was set aside for want of an affidavit to verify it. Rex v. Grainger, 3 Burr. 1617; S. P., Reg. v. Duffy, 9 Ir. L. R. 163.

A defendant in an indictment for a misdemeanor cannot plead over to the charge, after a plea in abatement for a misnomer, on which issue was taken and found against him. Rex v. Gibson, 8 East, 107. See Reg. v. Phelps, Car. & M. 180.

A plea in abatement is a dilatory plea, and must be pleaded with strict exactness. O'Connell v. Reg. (in error), 11 C. & F. 155; 9 Jur. 25

Although the prosecutor having demurred to a plea in abatement concluded in bar, praying final judgment:—Held, that the court was not precluded thereby, but was bound to give that judgment which was right on the whole record. Reg. v. Mitchell, 3 Cox, C. C. 94.

Where a replication to a plea in abatement introduces new matter, upon which issue may be taken, the prosecutor is entitled to pray final

judgment. Ib.

# 5. Pleas of Autrefois Convict and Acquit.

Statute.]—By 14 & 15 Vict. c. 100, s. 28, "on any plea of autre"fois convict or autrefois acquit, it 
"shall be sufficient for any defend"ant to state that he has been law"fully convicted or acquitted, as 
"the case may be, of the said of"fence charged in the indictment."

Validity.]—A plea of autrefois convict or acquit, which shews that the judgment on the former indictment has been reversed for error in the judgment, is not a good bar to a subsequent indictment for the same offence. Reg. v. Drury, 3 C. & K. 193; 18 L. J., M. C. 189—C. C. R.

Where, by reason of some defect in the record, either in the indictment, place of trial, process or the like, a prisoner has not been lawfully liable to suffer judgment for the offence charged, he has not been in jeopardy in the same, which entitles him to plead the former proceeding, in bar to a subsequent indictment. Ib.

A prisoner is lawfully liable to suffer punishment on an erroneous record, until it is reversed in a court of error. *Ib*.

A judgment reversed is the same as no judgment; and upon a record without any judgment no punishment can be inflicted. *Ib*.

A plea of autrefois convict of an assault before justices, under 9 Geo. 4, c. 31, s. 27, is a bar to an indictment for feloniously stabbing in the same transaction. *Reg.* v. *Walker*, 2 M. & Rob. 446—Coltman.

But a previous summary conviction for an assault under 24 & 25 Vict. c. 100, s. 45, is not a bar to an indictment for manslaughter of the party assaulted, founded upon the same facts. *Reg.* v. *Morris*, 10 Cox, C. C. 480; 36 L. J., M. C. 84; 1 L. R. C. C. 90.

Two were indicted for having, on the 10th November, 1849, assaulted P. They pleaded autrefois acquit, and in their plea set out an indictment for murder, the third count of which alleged that they had murdered the deceased, by heatings on the 5th November and 1st December, 1849, and 1st January, 1850, and on divers other days between the 5th November and 1st January; and the plea averred that the assaults charged in the second indict-

ment were identically the same as those of which they had been acquitted on the trial of the first. The replication was, that the prisoners were not acquitted of the felony and murder, including the same identical assaults charged in the in-On the first trial the counsel for the crown had stated the assaults as conducing to the death, and had given them in evidence to sustain the charge of murder. It was proved, however, that the cause of death was a blow inflicted shortly before the death of the deceased, which occurred on the 4th January, but there was no evidence to shew by whom the blow was struck; and the prisoners were acquitted. The judge, on the second trial, told the jury, that if they were satisfied that there were several distinct and independent assaults, some or any one of which did not in any way conduce to the death of the deceased, it would be their duty to find the prisoners guilty. The jury found the prisoners guilty:—Held, that the conviction was right, as the prisoners could not, on the trial for murder, have been convicted, under 7 Will. 4 & 1 Vict. c. 85, s. 11, of the assaults for which they were indicted on the second trial. Reg. v. Bird, T. & M. 437; 2 Den. C. C. 94; 15 Jur. 193; 20 L. J., M. C. 70; 5 Cox, C. C. 11.

An acquittal on an indictment for rape could not be successfully pleaded to a subsequent indictment for an assault with intent to commit a rape, nor could an acquittal an indictment for feloniously stabbing, with intent to do grievous bodily harm, be successfully pleaded to an indictment for an assault, though, in each case, the transaction was the same, and the accused might have been convicted of an assault under 7 Will. 4 & 1 Reg. v. Gisson, Viet. c. 85, s. 11. 2 C. & K. 781—C. C. R.

and the plea averred that the assaults charged in the second indictangled in the second indictangled.

On the trial of an information for a misdemeanor the judge discharged

the jury. The defendant then put a plea on the record, setting out the facts under which the jury was discharged, in the nature of a plea autrefois acquit:—Held, that this matter could not be raised by way of plea, but must be raised by way of error on the record after conviction. Reg. v. Charlesworth, 9 W. R. 805; 5 L. T., N. S. 150; 4 L. T., N. S. 638—Q. B.

The prisoner stole the goods of J. B. from his stall, which at the time was in charge of R. B. his son, a child of fourteen, who lived with his father, and worked for him. The first indictment against him for stealing the goods described them as the property of R. B. sessions thinking this a wrong description directed an acquittal, and caused a new bill to be sent up laying the property in J. B. To this indictment he pleaded autrefois acquit: —Held, that the plea could not be sustained, for the prisoner could not, on the evidence, have been convicted on the first indictment, charging the property as that of R. B., and that the court could only look at the first indictment as it stood, without considering whether the allegation as to the ownership of the goods might not have been amended so as to have warranted a conviction. Reg. v. Green, Dears. & B. C. C. 113; 2 Jur., N. S. 1146; 26 L. J., M. C. 17; 7 Cox, C. C. 186.

A plea of autrefois acquit cannot be pleaded unless the facts charged in the second indictment would, if true, have sustained the first. Rex v. Vandercomb, 2 East, P. C. 519; 2 Leach, C. C. 708.

A plea autrefois acquit of a burglary, where the felony is laid as actually committed, cannot be pleaded to an indictment for the same burglary laid with intent to commit the felony, for they are two distinct and different offences. *Ib.* 

If a party charged with the crime of murder, committed in the perpetration of a burglary, is generally

acquitted on that indictment, he cannot afterwards be convicted of the burglary with violence, as the general acquittal on the charge of murder would be an answer to that part of the indictment containing the allegation of violence. Reg. v. Gould, 9 C. & P. 364—Tindal and Parke.

If, in a plea of autrefois acquit, the prisoner was to insist on two distinct records of acquittal, his plea would be bad for duplicity. Rew v. Sheen, 2 C. & P. 635—Burrough and Littledale.

If the prisoner could have been legally convicted on the first indictment upon any evidence that might have been adduced, his acquittal on that indictment may be successfully pleaded to a second indictment; and it is immaterial whether the proper evidence was adduced at the trial of the first indictment or not. The

A person was acquitted of an assault with intent to murder, but was convicted of an assault with intent to do grievous bodily harm, and the prosecutor having subsequently died, he was indicted for murder:—Held, that he was properly indicted. Reg. v. Salvi, 10 Cox, C. C. 481, n.

A first count for murdering a male bastard child, stated that the prisoner gave and administered a large quantity of oil of vitriol, and forced the child to take into his mouth and throat a large quantity of the said oil of vitriol, the prisoner knowing that the said oil of vitriol would occasion the death of the child, whereby he became disordered in his mouth and throat, and by the disorder, choking, suffocating, and strangling occasioned thereby, languished and died. The second count was for murdering the child, by administering a certain acid called oil of vitriol, and forcing the child to take a large quantity of the said acid into his mouth and throat, by means whereof he be-

came injured and disordered in his mouth and throat, and incapable of swallowing his food, and died of the inflammation, injury and disorder occasioned thereby. A plea, that the prisoner had been acquitted for murdering a base infant male child, by giving and administering a certain deadly poison, to wit, oil of vitriol, and by forcing the child to take, driuk, and swallow down a large quantity of the said oil of vitriol, the prisoner knowing it to be a deadly poison, whereby the child became sick and distempered in his body, and, by the sickness and distemper occasioned thereby, languished and died, is a good bar to the indictment. Rex v. Clark, 1 B. & B. 473.

One was indicted in Middlesex for perjury committed in an affidavit, which indictment, after setting out so much of the affidavit as contained the false oath, and on this he was acquitted; after which he was indicted again in Middlesex for the same perjury, with this difference only, that the second indictment set out the jurat of the affidavit, in which it was stated to have been sworn in London; which was traversed by an averment that in fact the defendant was so sworn in Middlesex, and not in London:-Held, that he was entitled to plead autrefois acquit, for the jurat was not conclusive as to the place of swearing; and the same evidence as to the real place of swearing the affidavit might have been given under the first as under the second indictment, and therefore the defendant had been once before put in jeopardy for the same offence. Rex v. *Emden*, 9 East, 437.

Indictment that the defendant, in the reign of the present king, kept a common gaming-house; plea, that the defendant, in the reign of the present king, was acquitted upon an indictment for keeping a common gaming-house in the reign of the late king, against the peace of P. 836.

our said lord the king; and averring the identity of the offences: demurrer, concluding with a prayer of judgment of respondent ouster: —Held, first, that the plea was bad, because the indictment on which the acquittal was founded charged an offence committed in the reign of the late king, and the defendant could not by averment shew that the offence charged in both indictments was the same; and secondly, that the judgment on demurrer was final, although the deniurrer concluded with a prayer of judgment of respondent ouster. Rex v. Taylor, 5 D. & R. 422; 3 B. & C. 502.

Trial.]—A prisoner may plead not guilty, after his special plea of autrefois acquit is found against him. Rex v. Welch, Car. C. L. 56.

The court will not reject a plea of autrefois convict on account of the informal manner in which it is handed in by the prisoner, but will assign counsel to put it into a formal shape, and postpone the trial, to give time for its preparation. Rex v. Chamberlain, 6 C.& P. 93—Littledale.

The jury cannot be charged at the same time to try the two issues of autrefois acquit and not guilty. Rex v. Roche, 1 Leach, C. C. 134.

Four persons were tried for a rape, upon an indictment containing counts charging each as principal, and the others as aiders and abettors. They were acquitted; and it being proposed on the following day to try three of them for another rape upon the same person (the second indictment being exactly the same as the first, with the omission only of the fourth prisoner), they pleaded autrefois acquit to the second indictment, averring the identity of the offences. To this plea there was a replication that the offences were different:—Held, that on this issue the prisoners' counsel must begin. Rex v. Parry, 7 C. &

The prisoners' counsel put in the commitment and the former indictment, and also the minutes of the former acquittal written on the indictment. On this evidence the jury found that the offences were the same; and it being referred for the opinion of judges, whether there was any evidence to justify and support the verdict, and if not, whether such verdict was final, and operated as a bar to any further proceedings by the crown upon the second indictment:—Held, that the verdict of the jury was final, and the prisoners were discharged.

During the sitting under the same commission, the original indictment, and minutes of the verdict upon it, are receivable in evidence in support of a plea of autrefois acquit, without a record being drawn up. In order to his pleading autrefois acquit in a case of felony, the prisoner has not a right to a copy of the second indictment, but he has a right to have the indictment read

slowly. Ib.

A person who is tried for felony as a principal, and acquitted, cannot plead that acquittal in bar of another indictment, which charges him with being an accessory before the fact to the same felony. Rex v. Plant, 7 C. & P. 575.

A verdict for a prisoner, on an issne of autrefois convict, cannot be set aside, and a new trial had, though without evidence, and against the opinion of the judge. Rex v.

Lea, 2 M. C. C. 9.

A prisoner was tried, on the 6th of April, 1863, upon an indictment charging him with having, on the 22nd of January, 1863, stolen 25 lbs of copper, the property of A., and was acquitted. He was again tried on the 29th of June, 1863, upon an indictment which charged him, in a first count, with having, on the 20th of September, 1862, stolen a riddle, the property of A., and in the second count, with having, on the 16th of January, 1863, the 4th, was adjourned to Friday

stolen five shovels, also the property The prisoner had been in of A. A.'s employ several years, and the riddle and shovels were found in his possession on the 21st of January, 1863, but there was no evidence to shew when they were stolen:-Held, first, that he was not entitled to be acquitted upon the second trial on the ground that the charge of stealing the riddle and shovels ought to have been included in the first indictment, and that on these facts a verdict was rightly found against him upon a plea of autrefois acquit. Reg. v. Knight, L. & C. 378; 9 Cox, C. C. 437; 9 L. T., N. S. 808.

Held, secondly, that he was not entitled to be acquitted on the ground that the stolen property was not proved to have been in his possession recently after it was stolen.

*Proof.*]—A plea of autrefois convict can only be proved by the record; and the indictment, with the finding of the jury, indorsed by the proper officer, is not sufficient, although it appears that no record has been made up. But the court, before whom the prisoner is brought to be tried the second time, will postpone the trial at the request of the prisoner, on an affidavit of the fact, to give time for an application for a mandamus to compel the making up of the record. Rex v. Bowman, 6 C. & P. 101.

A plea of autrefois convict stated that the prisoner was indicted, convicted, and sentenced, at a session of the peace, duly holden by adjournment on the 5th of July; replication, nul tiel record. The record, produced in support of the plea, stated that the indictment was found at a session commenced and holden on Monday, the 1st of July, and that the court was adjourned until Tuesday the 2nd; that the court, having re-assembled on Thursday the 5th, when the prisoner was tried and convicted: — Held, that the plea of autrefois convict was not proved by the record, inasmuch as for want of an adjournment from the Tuesday to the Thursday, the proceedings on the Friday were coram non judice, and a nullity. Rex v. Bowman, 6 C. & P. 337—Gaselee, Vaughan, and Taunton.

#### 6. Demurrers.

Statute. —By 14 & 15 Vict. c. 100, s. 25," every objection to any "indictment for any formal defect "apparent on the face thereof shall "be taken by demurrer or motion "to quash such indictment, before "the jury shall be sworn, and not "afterwards; and every court be-"fore which any such objection "shall be taken for any formal de-"fect may, if it be thought neces-"sary, cause the indictment to be " forthwith amended in such partic-"ular by some officer of the court " or other person, and thereupon the "trial shall proceed as if no such de-"fect had appeared."

Upon a demurrer to an indictment found in an inferior court, objections may be taken as well to the jurisdiction of such court, as to the subject-matter of the indictment. Rex v. Fearnley, 1 T. R.

316.

It is no objection on demurrer, that several different defendants are charged, in different counts of an indictment, for offences of the same nature; though it may be a ground for application to the discretion of the court to quash the indictment. Rex v. Kingston, 8 East, 41.

On demurrer to an indictment, the superior court will look into the whole record. Rex v. Fearnley, 1

Leach, C. C. 425.

In Felonies.]—A prisoner cannot of right demur and plead over to an indictment for felony. Reg. v. Odgers, 2 M. & Rob. 479—Cresswell.

A prisoner on an indictment for murder may demur, and if the demurrer is overruled, he may plead not guilty; and, semble, that he may demur and plead over to the felony at the same time. Reg. v. Phelps, Car. & M. 180—Coltman; S. P., Reg. v. Adams, Car. & M. 299—Coleridge. But see Reg. v. Mitchell, 3 Cox, C. C. 31.

Where a prisoner, in felony, has, in the absence of his counsel, pleaded to an indictment which is objectionable on demurrer, the judge will, on the application of his counsel, allow him to demur before the evidence is gone into. Reg. v. Purchase, Car. & M. 617—Patteson.

In embezzlement, if the prisoner demurs to the indictment, and the demurrer is decided against him, he may still plead over to the felony,

and take his trial. Ib.

Where a defendant had pleaded inadvertently to an indictment under circumstances which might shew it to have been a mistake on his part, the court refused to allow him to withdraw his plea for the purpose of demurring, where the objection was one of a technical character, not in any way affecting the merits of the case. Reg. v. Brown, 3 Cox, C. C. 127—Pollock and Coltman; S. P., Reg. v. Odgers, 2 M. & Rob. 479—Cresswell.

A mistake in the year of the Queen's reign in which the offence is stated to have occurred is corrected by pleading over, and can only be taken advantage of on demurrer. Reg. v. Fenvick, 4 Cox, C. C. 139; 2 C. & K. 915—Cresswell.

In Misdemeanors.]—The court has a discretion to allow a defendant to demur and plead over to an indictment for a misdemeanor. Reg. v. Birmingham and Gloucester Railway Company, 3 Q. B. 223; 2 G. & D. 236; 6 Jur. 804.

An indictment for a nuisance is not to be quashed, but is to be de-

murred to. Rex v. Sutton, 4 Burr. 2116.

An indictment against a township for non-repair of a highway, alleged that the inhabitants, "the common highway being in decay, from the time whereof the memory of man is not to the contrary ought to repair, and still ought to repair when and so often as it shall become necessary." The indictment contained no allegation that the defendant had ever repaired the road. The court granted leave to demur, with liberty to plead over in case of judgment against them on the demurrer. Reg. v. Tryddyn, 1 B. C. C. 19; 21 L. J., M. C. 108—Erle.

Besides the common four-day rule on a defendant in misdemeanor, to join in demurrer to his plea, there must be a peremptory rule, giving him a certain day in the discretion of the court, without which judgment cannot be signed against him. Rex v. Johnson, 6 East, 583.

Judgment.]—If a defendant demurs to an indictment, whether in abatement or otherwise, the court will not give judgment against him to answer over, but final judgment. Rex v. Gibson, 8 East, 107, 111.

If an indictment for felony is demurred to, and judgment is given against the prisoner on demurrer, such judgment is final, and sentence will be passed upon it; and it is not a judgment quod respondeat ouster. Reg. v. Faderman, 3 C. & K. 359; T. & M. 286; 4 Cox, C. C. 359—Alderson, Cresswell and Williams.

A judgment on demurrer in felony, on the ground that the indictment does not sufficiently charge a felony, is no bar to a subsequent good indictment for the same felony. Reg. v. Richmond, 1 C. & K. 240—Rolfe.

# 7. Recognizances.

(11 & 12 Vict. c. 42, s. 20.)

To prosecute or appear.]—When- ment at the next quarter so ever a prosecutor shall have prefer- and judgment was respited.

red a bill of indictment against a defendant, and shall move the court for process to issue upon the indictment against the defendant, the prosecutor so applying shall, before such process shall issue, himself enter into such recognizances as the court shall direct, to prosecute the law with effect against the defendant. Reg. Gen., Central Criminal Court, Jan. Sess. 1842; Car. & M. 254.

Where an indictment for felony was found at the Central Criminal Court against a peer of the realm and several commoners, at a time while the houses of parliament were not sitting, the recognizances of the commoners were respited from session to session, until after the case of the peer had been disposed of in the House of Lords. Reg. v. Douglas, Car. & M. 193.

Where the trial of prisoners had been successively postponed for two assizes, in consequence of the absence of a material witness, and the affidavit on which application was made for further postponement, stated, that the witness in question was believed to have gone to India as a soldier, so that there was not any prospect of his soon return, the judge ordered the recognizances of the prosecutor to be discharged, and discharged the prisoners without compelling them to enter into any recognizances for their future ap-Reg. v. Bridgman, Car. pearance. & M. 271—Maule.

Where a defendant is under recognizances to appear and take his trial at a particular session of the Central Criminal Court, no notice of trial to the prosecutor is requisite, and he is bound to be prepared to try at that session. Reg. v. Parker, 3 Cox, C. C. 299.

Indictment for misdemeanor at the quarter sessions. The defendant pleaded guilty, and was bound by recognizances to appear for judgment at the next quarter sessions, and judgment was respited. At the next April sessions judgment was further respited until the June sessions, when judgment was given, and the defendant sentenced to be fined and imprisoned. On error brought:-Held, that a court of quarter sessions has power to respite cases from one sessions to another. Keen v. Reg. (in error), 3 New Sess. Cas. 25; 11 Jur. 1060; 10 Q. B. 928; 16 L. J., M. C. 180; 2 Cox, C. C. 341.

The record stated, that at the first session "it was considered and adjudged that the defendant should enter into recognizances to appear ": —Held, that these words did not give the order the effect of a judgment, so as to oust the sessions of their jurisdiction to give judgment at the subsequent sessions.

The 5 Geo. 2, c. 19, s. 3, requiring the party removing a conviction by a magistrate to enter into a recognizance, with two sureties in 50*l.*, conditioned to prosecute the writ with effect, was not complied with by the party and his two sureties entering into a recognizance in 251. each, but it must be in the entire sum of 50l. Rex v. Dunn, 8 T. R. 217.

A sheriff has no authority to take a bond for the appearance of persons arrested by him, under process issuing upon an indictment at the quarter sessions for a misdemeanor; he can only take a recognizance for their appearance. Bengough v. Rossiter, 4 T. R. 505; 2 H. Bl. 418, 426.

Enlarging. —Where a prisoner has made default, the recognizance of the prosecutor may be enlarged till the apprehension of the prisoner. In re Young, 2 Cox, C. C. 280—Patteson.

Discharging.]—Where a prisoner has been committed for trial at the assizes, and parties bound over by a magistrate to prosecute and give evidence, the judge will not dis- Hilary term, without any notice

charge the recognizances on an intimation that the attorney-general does not think it a proper case for Reg. v. Freakley, 6 prosecution. Cox, C. C. 75—Williams.

The court refused to discharge, without preferring a bill of indictment, the recognizances of prosecutors, being members of a society for promoting religious knowledge among the poor, who had caused a servant to be committed for embezzlement; the application being made not on the ground of any defect in the evidence, but on the ground that the prosecutors thought that the reformation of the offender would be best promoted by such a Rex v. Paul, 6 C. & P. 323—Park, Patteson, and Gurney.

But where, at the assizes, parish officers were under recognizances to prosecute a pauper for obtaining money by false pretences, the judge permitted the recognizances to be discharged, the party having been in prison several weeks, and the parish being unwilling to indict. Rex v. Adams, 6 C. & P. 324, n.—

Vaughan.

Wherea defendant, on being taken into custody on the 8th June, under a judge's warrant issued against him on an indictment for a blasphemous libel, entered into a recognizance to appear and plead within the first eight days of the ensuing Trinity term, and to try the cause at the Middlesex sittings after that term, and pleaded not guilty, but did not give notice of trial or make up the record, either for the sittings after Trinity or Michaelmas term, nor was any rule obtained for respiting the estreating of the recognizance; and the prosecutors gave notice of trial after Trinity and Michaelmas terms, but the causes were not tried in either; but made remanets to the sittings after Hilary, and the defendant was ready to take his trial on both these occasions; and the recognizance was estreated in having been given to the defendant, or any motion made by the prosecutors:—Held, that the estreat was regular, and conformable to the ordinary practice. Rex v. Clark, 5 B. & A. 728.

Where a trial for felony is postponed, on the application of the counsel for the prosecution, on the ground of the absence of a material witness, it is in the discretion of the judge, whether, on consideration of the circumstances of each particular case, he will order the prisoner to be detained till the next assizes, or admit him to bail, or discharge him on his own recognizance. Rex v. Osborn, 7 C. & P. 799—Bolland.

Falsely entering into. -By 24 & 25 Viet. c. 98, s. 34, "whosoever, "without lawful authority or ex-"cuse (the proof whereof shall lie " on the party accused), shall, in "the name of any other person, ac-"knowledge any recognizance or "bail, or any cognovit actionem or "judgment, or any deed or other "instrument, before any court, "judge or other person lawfully au-"thorized in that behalf, shall be "guilty of felony."

#### Commissions and Gaol Delivery.

An offence was committed within a locality which had a separate body of justices exercising jurisdiction within the liberty, by virtue of three separate commissions: first, the ordinary commission of the peace; secondly, a commission to try all treasons, misprisions of treasons, insurrections, murders, felonies, manslaughters, &c.; thirdly, a general commission of gaol delivery. Neither of the commissions contained any non-intromittant clause; but the general county magistrates, in fact, exercised no jurisdiction within the liberty, which had a gaol and separate custos rotulorum and clerk of the peace:—Held, that these commissions did not oust the jurisdiction of her Majesty's justices of gaol de- of a prisoner having been read in

livery for the whole county; and that the prisoner having been removed from the liberty by writs of habeas ad deliberandum and recipias corpus, was properly tried by such justices. Reg. v. Crane, 3 Cox, C. C. 53—Wilde.

The power of justices of the peace of a county, or of a recorder of a borough, to try prisoners at quarter sessions, is not suspended or affected by the fact of the judges sitting under the usual commission of assize, oyer and terminer, and general gaol delivery. Smith v. Reg. (in error), 13 Q. B. 738; 18 L. J., M. C.

An allegation upon a record that three judges executed a commission in relation to the trial of prisoners, to try before whom that commission was issued, is an affirmative allegation of the authority to perform that duty, and is not rendered uncertain by a subsequent statement that the commission was directed to them O'Brien v. Reg. (in and others. error), 2 H. L. Cas. 465.

Prisoners triable under special commissions may be discharged by gaol delivery. *I* Leach, C. 157, 170. Rex v. Platt, 1

A prisoner in custody under a defective commitment may be discharged under a gaol delivery.

It is not imperative on a comissioner of gaol delivery to discharge all the prisoners in the gaol who were not indicted; it being discretionary in him to continue on their commitments such prisoners as appear to him committed for trial, but against whom the witnesses did not appear, having been bound over to the sessions. Anon., R. & R. C. C. 173.

The judges' commission of gaol delivery applies only to untried prisoners in the gaol, and not to untried prisoners in houses of correction. Reg. v. Arlett, 2 C. & K. 596—Pat-

A special commission for the trial

open court at the opening of the commission, immediately before the delivery of the charge to the grand jury, an application made at the arraignment by his counsel for the commission to be then read a second time, upon the ground that it had not been read in the presence of the prisoner, was refused. Reg. v. Bernard, 1 F. & F. 240.

Under a commission of cyer and terminer, the general court may be divided into as many courts as convenience requires; and each separate court is to be considered as held, not only before the judge actually sitting, but also constructively before all the members of the commission then acting under it. Leverson v. Reg. (in error), 38 L. J., M. C. 97; 4 L. R., Q. B. 394; 20 L. T., N. S. 485.

# 9. Restoring Money found on Prisoners.

Restitution and Recovery of Stolen Property. - By 30 & 31 Vict. c. 35, s. 9, "Where any prisoner shall be "convicted, either summarily or "otherwise, of larceny or other of-" fence, which includes the stealing " of any property and it shall ap-" pear to the court by the evidence "that the prisoner has sold the "stolen property to any person, and "that such person has had no knowl-"edge that the same was stolen, "and that any monies have been " taken from the prisoner on his ap-"prehension, it shall be lawful for "the court, on the application of " such purchaser, and on the restor-"ation of the stolen property to the " prosecutor, to order that, out of " such monies a sum not exceeding "the amount of the proceeds of the " sale be delivered to the purchaser."

The court will direct money found upon a prisoner to be restored to him before trial, if it appears by the depositions that it is in no way material to the charge upon which he is to be tried. Rex v. Barnett, 3 C. & P. 600—Park.

The judge will not grant an order for the delivery to a prisoner of money found on his person: for, semble, neither a judge nor a justice of the peace has power to make such an order. Reg. v. Pierce, 6 Cox, C. C. 117.

A constable who apprehends a prisoner has no right to take away from him any money which he has about him, unless it is in some way connected with the offence with which he is charged; as he thereby deprives him of the means of making his defence. Reg. v. O'Donnell, 7 C. & P. 138: S. P., Rex v. Kinsey, 7 C. & P. 447; Rex v. Jones, 6 C. & P. 343; Rex v. Burgiss, 7 C. & P. 488—Littledale.

Where a prisoner, a week after the commission of the offence, was apprehended on a charge of robbing A. of 25*l*. in notes, and 9*l*. in gold; and on the prisoner was found the sum of 12*l*. in gold, but none of it identified: the judge ordered 5*l*. to be restored to the prisoner, in order to enable him to make his defence. Rex v. Rooney, 7 C. & P. 515—Littledale.

There is no objection to a prisoner who is under a charge of felony, executing, before his trial, a power of attorney, to obtain money from a savings' bank, for the purpose of paying his attorney for conducting his defence, or paying any other bonâ fide debt. Rex v. Coxon, 7 C. & P. 651—Vaughan.

A defendant, committed to take his trial at the assizes for assaulting a constable, had 2l. 3s. 8d. taken from him by the constable who conveyed him to prison, to pay for (as was alleged) the expenses of conveying him to the prison, and his maintenance in prison till the trial, this being the ordinary practice in the county of Stafford:—Held, that the practice was quite wrong, and the judge directed the money to be restored to the defendant. Reg. v. Bass, 2 C. & K. 822—Platt.

A judge has no power, either by statute or at common law, to direct the disposal of chattels in the possession of a convicted felon, not belonging to the prosecutor. Reg. v. London (Corporation), El. Bl. & El. 509; 4 Jur., N. S. 1078; 27 L. J., M. C. 231. S. C., nom. Reg. v. Pierce, Bell, C. C. 235; 8 Cox, C. C. 344.

#### 10. Contempt of Court.

Service of an order of a court of general gaol delivery, calling on the editor of a newspaper "to answer for contemptuously publishing the proceedings of a trial there," at the office where the newspaper was published, was good service within the 38 Geo. 3, c. 78, s. 12, and the editor not having appeared, the fine was held to be properly imposed upon him in his absence. Rex v. Clement, 4 B. & A. 218.

Exhibiting in an assize town an inflammatory publication, respecting a crime about to be tried at the assizes, is not a contempt which the judge can interfere to stop, by committing the party exhibiting. Rex v. Gilham, M. & M. 165—Littledale and Gaselee.

# 11. Affidavits.

The court will direct an affidavit in a case of misdemeanor, which contains matter both scandalous and irrelevant, to be removed from the files of the court; and the party who filed it is liable to be visited as for a contempt of court. Reg. v. Gregory, 1 C. & K. 228—Parke and Coltman.

If an affidavit contains matter that is irrelevant and scandalous, the court, though it cannot direct its removal from the files, will give the party attacked an opportunity of denying the defamatory matter, upon oath, by a counter affidavit. Ib.

#### XLIV. OF JURIES AND CHAL-LENGES.

- 1. Grand, 529.
- 2. Jurymen, 521.
- Challenges, 523.
   View, 527.
- 5. Locking-up, 527.
- Discharge of, 527.
   Jury Process, 528.
- 6 Geo. 4, c. 50; 7 & 8 Geo. 4, c.

28, s. 2; 15 & 16 Vict. c. 76, s. 105.

In High Treason. See TREA-

"As to the qualification and lia"bility of burgesses to be jurors," see 5 & 6 Will. 4, c. 76, ss. 121, 122, 123.

By 6 & 7 Vict. c. 85, s. 2, "wher"ever in any legal proceedings any
"legal proceedings whatever may
"be set out, it shall not be neces"sary to specify that any particu"lar persons who acted as jurors
"had made affirmation instead of
"oath, but it may be stated that
"they served as jurymen, in the
"same manner as if no act had
"passed for enabling persons to
"serve as jurymen without oath."

#### 1. Grand.

Constitution and Duties.]—If the grand jury, at the assizes or sessions, has ignored a bill, they cannot find another bill against the same person for the same offence at the same assizes or sessions, and if such other bill is sent before them they should take no notice of it. Reg. v. Humphreys, Car. & M. 601—Patteson. See contra, Reg. v. Neuton, 2 M. & Rob. 503—Wightman.

An Irish peer ought not to serve on a grand jury, unless he is a member of the House of Commons, he then being to all intents and purposes a commoner. In re Headley (Lord), R. & R. C. C. 117.

A person may serve on the grand jury although he is not a freeholder. *Anon.*, R. & R. C C. 177.

A grand jury ought not to consist of more than twenty-three persons. Rev v. Marsh, 1 N. & P. 187; 6 A. & E. 236; 2 H. & W. 366; 1 Jur. 38.

Where more than twenty-three persons are sworn upon a grand jury, and a bill of indictment is found by them, to which a defendant pleads, and is tried and found guilty, the court will not quash the indictment. *Ib*.

The court will not receive an affidavit of a grand jury as to what passed in the grand jury-room, upon the subject of a bill of indict-

ment. Ib.

The grand jury returned a bill of indictment which contained ten counts, for forging and uttering the acceptance of a bill of exchange, with an indorsement—"a true bill on both counts," and the prisoner pleaded to the whole ten counts. After the case for the prosecution had concluded, the prisoner's counsel pointed this out. The grand jury was discharged, and the judge would not allow one of the grand jurors to be called as a witness to explain their finding. Reg. v. Cooke, 8 C. & P. 582—Patteson.

The grand jury had come into court and had been discharged and had left the court, but had neither left the building nor separated. The judges directed them to be sent for back into court, and directed another bill of indictment (the witnesses on which were going abroad) to be sent before them. Reg. v. Holloway, 9 C. & P. 43—Parke.

A grand jury has no authority by law to ignore a bill for murder on the ground of insanity, though it appears clearly from the testimony of the witnesses, as examined by them on the part of the prosecution, that the accused was in fact insane; but if they believe that the acts, if they had been done by a person of sound mind, would have amounted to murder, it is "or intention in the intention of the prosecution, that the accused was in fact insane; but if they believe that the acts, if they had been done by a person of sound mind, would have amounted to murder, it is "nesses."

their duty to find the bill; otherwise the court cannot order the detention of the party during the pleasure of the crown, as it can either on arraignment or trial under the 39 & 40 Geo. 3, c. 94, ss. 1 & 2. Reg. v. Hodges, 8 C. & P. 195—Alderson.

Semble, that no objection to the caption of an indictment for an allegation that the grand jurors were sworn and affirmed, can be sustained without shewing that those who were sworn were persons who ought to have affirmed, or that those who were affirmed were persons who ought to have been sworn. *Mulcahy* v. *Reg.* (in error), 3 L. R., H. L. Cas. 306.

A material witness refused to give any evidence whatever to the grand jury:—Held, that the grand jury could not read the deposition of such witness as evidence, to enable them to find a bill. Reg. v. Rendle, 11 Cox, C. C. 209—Channell.

Swearing Witnesses.]—By 19 & 20 Vict. c. 54, s. 2, "it shall not be "necessary for any person to take "an oath in open court in order to "qualify himself to give evidence before a grand jury."

By s. 1, "the foreman of a grand "jury empannelled in England and "Wales is empowered to examine, "on oath or affirmation, all persons "who shall appear before a grand "jury to give evidence in support of any bill of indictment. The "name of every witness examined, "or intended so to be, shall be in "dorsed on the bill of indictment, "and the foreman shall write his "initials against the name of each "witness so sworn and examined." By s. 3, "the word 'foreman' is

"to include any member of the grand jury who may for the time being act on behalf of the foreman in the examination of wit-

Where the grand jury has found a bill, the judges before whom the case comes to be tried, ought not to inquire whether the witnesses were properly sworn previously to their going before the jury; and it seems that an improper mode of swearing them will not vitiate an indictment, as the grand jury is at liberty to find a bill upon their own knowledge only. Reg. v. Russell, Car. & M. 247—Wightman.

If witnesses go before the grand jury without being sworn, and the bill is found, and the prisoner tried and convicted, it is proper to recommend him for a free pardon. Rew v. Dickinson, R. & R. C. C. 401.

A grand jury cannot, on a suspicion that the witness has been tampered with by the prisoner, receive in evidence his written explanation in lieu of his parol testimony, for the purpose of finding a bill. Denby's case, 1 Leach, C. C. 514.

## 2. Jurymen.

Jurors.]-In criminal cases, twelve jurors must appear on the record. Rex v. St. Michael, 2 W. Bl. 718.

A new panel of seventy-two jurors may be ordered by the judge to be summoned during the assizes, and a conviction for felony by a jury selected therefrom, after challenging, though more than fortyeight, is valid. Reg. v. Cropper, 2 M. C. C. 18.

Upon the trial of an indictment for a misdemeanor, which continued more than one day, the jury, without the knowledge or consent of the defendants, separated at night:—Held, that the verdict was not therefore void. Rex v. Kinnear, 2 B. & A. 462.

In general, the assent of all the jury to the verdict pronounced by the foreman in their presence and hearing is to be conclusively inferred; and no affidavit can in any case be admitted to the contrary. Rex v. Wooler, 2 Stark. 111.

If during the trial of a felony it

is discovered that the prisoner has a relation on the jury, this is no ground for discharging the jury. Reg. v. Wardle, Car. & M. 647—Erskine.

The exemption from serving as jurymen, claimed by the members of the Barbers' Company, under the charters of 1 Edw. 4, and 5 Car. 1, and the 18 Geo. 2, c. 15, does not extend to the Central Criminal Court, but is confined to the local courts of the city, viz. those holden before the mayor, the sheriff or the coroner. White, In re, Car. & M. 189.

The jury should take the law from the judge; and therefore, when cases had been cited to the jury in a legal argument, and he had given an opinion on them, they were not allowed to be read to the jury in the address of the prisoner's counsel to them. Reg. v. Parish, 8 C. & P. 94—Abinger.

In a case of felony, the judge will not direct the jury to find special facts, and the jury may, if they think proper, find a general verdict, instead of finding special facts with a view to raise a question of law. Reg. v. Allday, 8 C. & P. 136—Abinger.

If a jury of matrons wishes to have the evidence of a surgeon before they give their verdict, they should return into court, and the surgeon should be examined as a witness in open court. Reg. v. Wycherley, 8 C. & P. 262—Gurney

Where, in a criminal prosecution, it is essential to prove the particular value of an article, the jury may use that general knowledge which any man can bring to the subject; but if any of the jurors has a particular knowledge on the subject, arising from his being in the trade, he ought to be sworn and examined as a witness. Rex v. Rosser, 7 C. & P. 648—Vaughan.

Jurors, Swearing.]—By 30 & 31

Fisn. Dig.—39.

Vict. c. 35, s. 8, "a juror in any "criminal proceeding refusing or "being unwilling, from alleged con-"scientious motives, to be sworn, "may be permitted, on the court "being satisfied of the sincerity of "the objection, to make a solemn "affirmation or declaration."

Swearing Jurors. —A Scotch covenanter may be sworn in as a juryman in a court of criminal law by the ceremony of holding up his hand, without kissing the book. Walker's case, 1 Leach, C. C. 498.

Upon trial of a prisoner for murder, the name of Joseph Henry Thorne was called from the jury panel as a juror to try him, when William Thorniley, who was also upon the jury panel, by mistake answered to the name, went into the jury-box, and, not being challenged, was duly sworn; the trial proceeded, and the prisoner was convicted and sentenced. The mistake was not discovered till the following day:—Held, that this was not a question of law arising at the trial over which the Court of Criminal Appeal had jurisdiction. Reg. v. *Mellor*, Dears. & B. C. C. 468; 4 Jur., N. S. 214; 27 L. J., M. C. 121; 7 Cox, C. C. 454.

Held, also, that there had been a mistrial, and that the court had jurisdiction to set aside the verdict and judgment; and that the proper course was to order a venire de

novo. Ib.

A juror was summoned in error. but not returned in the panel, and in mistake was sworn to try, during the progress of the trial these facts were discovered. The jury was discharged, and a fresh jury constituted, by taking another juryman in the place of the one who had served in error. Reg. v. Phillips, 11 Cox, C. C. 142—Russell Gurney.

De Medietate.]—By 6 Geo. 4, c. 50, s. 47, "nothing therein con-

"strued to extend to deprive any alien indicted or impeached of "any felony or misdemeanor of the "right of being tried by a jury de "medietate linguæ; but on the "prayer of every alien so indicted " or impeached, the sheriff or other "proper minister shall, by com-"mand of the court, return for one "half of the jury a competent "number of aliens, if so many "there be in the town or place " where the trial is had, and if not, "then so many aliens as shall be " found in the same town or place, "if any; and no such alien juror "shall be liable to be challenged "for want of freehold or for any "other qualification required by "that act, but every such alien "may be challenged for any other "cause, in like manner as if he " were qualified by the act."

None but aliens are entitled to be tried by a jury de medietate linguæ. Reg. v. Manning, 1 Den. C. C. 467; T. & M. 155; 2 C. & K. 887; 13 Jur. 962; 19 L. J., M.

C. 1; 4 Cox, C. C. 31.

By 7 & 8 Viet. c. 66, s. 16, any foreign woman married, or who shall be married, to a natural-born subject, or person naturalized, shall be deemed and taken to be herself naturalized, and to have all the rights and privileges of a naturalborn subject:-Held, that a woman, who was a native of Lausanne, in Switzerland, and was married to a British subject, was not entitled to a jury de medietate linguæ, as by her marriage her civil and political status was changed, she having ceased to be an alien, and having to all intents and purposes become a British subject. Ib.

Semble, that when an alien is indicted jointly with a British subject, he is ousted of his privilege, and cannot have a jury de medie-

tate linguæ. Ib.

Where a jury de medietate is claimed by a foreigner, on a trial "tained shall extend or be con- for murder, the crown is compelled to shew cause of challenge to a foreign juror after the panel has been called over, notwithstanding that the panel has not been exhausted by giving formal challenges. The challenge must be made before the book is given into the hands of the jury, and before the officer has recited the oath, and it is too late, though made before the juror kisses the book. Reg. v. Giorgetti, 4 F. & F. 546—Channell.

Taken ill during Trial.]—If a juryman is taken so ill as to be incapable of attending through the trial, another juryman returned in the panel may be added to the eleven jurymen, but the prisoner should be offered his challenges over again as to the eleven, the eleven should be sworn de novo, and the trial begin again. Rex v. Edwards, R. & R. C. C. 224; 2 Leach, C. C. 621, n.; 3 Camp. 207, n.; 4 Taunt. 309.

Where a juryman is taken so ill as to be unable to continue, another juryman may be sworn with the eleven jurymen already on the trial, and the witnesses already heard being recalled. Reg. v. Beere, 2 M. & Rob. 472—Cresswell; S. P., Rex v. Scalbert, 2 Leach, C. C. 620.

Copy of Panels.]—A prisoner indicted for felony is not entitled to a copy of the jury panel. Reg. v. Dowling, 3 Cox, C. C. 509.

# 3. Challenges.

By 6 Geo. 4, c. 50, s. 29, "in all "inquests to be taken before the "court of King's Bench, and all "courts of oyer and terminer and gaol delivery, wherein the king is "a party, howsoever it be, notwith- standing it be alleged by them that sue for the king, that the jurors of those inquests, or some of them, be not indifferent for the king, yet such inquests shall not remain untaken for that cause; but if they that sue for the king

"will challenge any of those jurors, "they shall assign of their chal"lenge a cause certain, and the 
"truth of the same challenge shall 
be inquired of according to the 
custom of the court; and it shall 
be proceeded to the taking of the 
same inquisitions as it shall be 
found, if the challenges be true 
or not, after the discretion of the 
court, and no person arraigned for 
murder or felony shall be admitted to any peremptory challenge 
above the number of twenty."

By 7 & 8 Geo. 4, c. 28, s. 3, "if "any person indicted for any trea"son, felony, or piracy, shall chal"lenge peremptorily a greater num"ber of the men returned to be of 
"the jury than such person is en"titled by law so to challenge, in 
"any of the said cases, every per"emptory challenge beyond the 
"number allowed by law in any of 
"the said cases shall be entirely 
"void, and the trial of such person 
"shall proceed as if no such chal"lenge had been made."

The challenge of a juror, either by the crown or by the prisoner, must be before the oath is commenced. The moment the oath has begun it is too late. The oath is begun by the juror taking the book, having been directed by the officer of the court to do so; but if the juror takes the book without authority, neither party wishing to challenge is to be prejudiced thereby. Reg. v. Frost, 9 C. & P. 136—Tindal, Parke and Williams.

After issue joined between the crown and the prisoner when the jury is called, and before they are sworn, is the only time when the prisoner has the right of challenge. Reg. v. Key, 3 C. & K. 371; T. & M. 62, 63; 2 Den. C. C. 351; 15 Jur. 1065.

Upon a challenge for cause, the person making the challenge must be prepared to prove the cause. Rew v. Savage, 1 M. C. C. 51.

It is no objection in arrest of

judgment that the sheriff, who was the prosecutor, returned the jury; it ought to have been taken by way of challenge. Rev v. Sheppard, 1 Leach, C. C. 101.

It is not a ground of challenge that a juror on other trials has not found a verdict for the crown. Sawdon's case, 2 Lewin, C. C. 117—

Coleridge.

If, on the trial of a case of felony, the prisoner peremptorily challenges some of the jurors, and the counsel for the prosecution also challenges so many that a full jury cannot be had, the proper course is to call over the whole of the panel in the same order as before, only omitting those who have been peremptorily challenged by the prisoner, and as each juror then appears, for the counsel for the prosecution to state their cause of challenge; and if they have sufficient cause, and the prisoner does not challenge, for such juror to be sworn. v. Geach, 9 C. & P. 499—Parke.

It is no cause of challenge of a juror by the counsel for the prosecution in case of felony, that the juror is a client of the prisoner, who

is an attorney. Ib.

Nor that the juror has visited the prisoner as a friend since he has

been in prison. *Ib.* 

In a case of felony, after a prisoner has challenged twenty of the jurors peremptorily, he may still examine any other of the jurors who are subsequently called, as to their qualification. Ib.

There can be no peremptory challenges in collateral issues. Rex

v. Kadcliffe, 1 W. Bl. 3.

No challenge, either to the array or to the polls, can be taken until a full jury has appeared; therefore, where the challenges are taken previously, they are irregularly made, and out of season. Rex v. Ed. monds, 4 B. & A. 471.

No jury can be challenged until a full jury appears in the box. Reg. v. Lacey, 3 Cox, C. C. 517.

Alienage is a ground of challenge to a juror; but if the party has an opportunity of making his challenge, and neglects, he cannot afterwards make the objection. Rex v. Sutton, 8 B. & C. 417; S. C. nom. Rex v. Despard, 2 M. & R. 406.

A prisoner, in a case of felony, having challenged twenty jurors peremptorily, cannot withdraw one of those challenges to challenge another jury, instead of one that he had previously challenged. Rex v.Parry, 7 C. & P. 836; 1 Jur. 674

-Bolland.

On the trial of an indictment for a riot, it is ground for the prosecutor's challenging a juror, that he is an inhabitant of the town where the riot occurred, and that he has taken an active part in the matter which led to it. Reg. v. Swain, 2 M. & Rob. 112; 2 Lewin, C. C. 116 –Coleridge.

The right of a prisoner to a peremptory challenge of jurors to the number of twenty exists in all cases of felony, and is not confined to those which are punishable capitally. Gray v. Reg. (in error), 11 C.

& F. 427; 8 Jur. 879.

Gurney and Cresswell.

A challenge of the array, stating that the sheriff "has not chosen the panel indifferently and impartially, as he ought to have done, and that the panel is not an indifferent panel," is bad, as being too general. Reg. v. Hughes, 1 C. & K. 235-

On the trial of a misdemeanor on the crown side of the assizes, it is a fair mode of practice to allow the defendants to object to the jurors, as they are called, without shewing any cause, till the panel is exhausted, and then to recall the jurors in the same order in which they were called at first, and then not to allow any challenge except for cause, and this is the constant practice on the Welsh circuit, where challenges of jurors very frequently occur. Reg.v. Blakeman, 3 C. & K. 97— Williams.

Where a prisoner was found guilty on an indictment for larceny, which contained a count for a previous conviction, and after conviction for the larceny, the court thought fit to swear the jury afresh to try the question of whether the prisoner had been previously convicted:—Held, that he was not entitled to challenge the jury afresh. Reg. v. Key, T. & M. 623; 2 Den. C. C. 347; 3 C. & K. 371; 15 Jur. 1065; 21 L. J., M. C. 35.

The right of ordering jurors to stand by, in cases of misdemeanor, may be exercised by a private prosecutor equally with the crown. Reg. v. M' Cartie, 11 Ir. C. L. R. 207.

On a writ of error upon an indictment for murder, the record stated, that in forming the jury, after challenges by the crown without cause assigned, and by the prisoner, nine only of those called were elected to be sworn. Twelve of the jurors returned upon the panel were during that time deliberating upon their verdict in another case. Thereupon the name of I., who had been before ordered to stand by upon a challenge by the crown without cause being assigned, was again called, and being again challenged by the crown, the counsel for the prisoner prayed that the crown might be put to assign cause. fore any judgment was given by the court the twelve jurors who sat as the jury in the other case came into court and gave their verdict. Thereupon the counsel for the crown prayed that I. should be ordered to stand by until those twelve should be called. The counsel for the prisoner objected that I. should be sworn, unless good cause of challenge was assigned by the crown. The court adjudged that I. should stand by, and that the names of the jurors who so came into court should then be called instead of the name of P., who stood next after I. The three required to complete the panel were taken from those jurors: of the jurors on the panel should be

—Held, that, it being conceded that the 33 Edw. 1, st. 4, and 6 Geo. 4, c. 50, s. 29, did not take away the power of the crown to challenge without assigning cause till the panel had been gone through or perused; the panel had not been gone through or perused, so as to require the crown to assign cause of challenge, when the twelve jurors came into court, nor until their names had been called, and thereupon the judge was right in ordering I. to stand by the second time. Mansell v. Reg. (in error), 8 El. & Bl. 54; Dears. & B. C. C. 375; 27 L. J., M. C. 4—Exch. Cham.

The record stated that P., named on the panel, was called, and elected, and tried, to the intent that he should be sworn; without being sworn, he said that he had conscientious scruples against capital pun-The counsel for the ishments. crown prayed that he should be ordered to stand by. The counsel for the prisoner prayed that the crown should assign cause of challenge. The judge told him that if he felt that he could not do his duty he had better withdraw; and thereupon it was ordered by the court that he should stand by:—Held, that this was a challenge by the crown without assigning cause, and therefore the judge was right in ordering P. to stand by. Ib.

Held, that the statement that the court ordered jurymen to stand by was unobjectionable, as it meant, that, being challenged by the crown, they were to stand aside until the proper time for deciding upon the challenge arrived. 16.

The names of the jurors who had served in the other case, standing in different parts of the panel, were called over consecutively before any one who had been already called once were called again: - Held, that this was a proper course; that there was no fixed rule of practice as to the order in which the names called: and that if the usual course was departed from it was not ground Ib.of error.

The fact that a jurer is over sixty years of age is not a ground of challenge. Mulcahy v. Reg. (in error), 3 H. L. Cas. 306; and 1 Ir.R., C. L. 13.

Challenge to the array is only where the sheriff has been guilty of wilful default, and the summoning of the jury is a duty purely ministerial. Reg. v. Burke, 10 Cox, C. C. 519.

On Trials at Nisi Prius. — Where the sheriff's officer had neglected to summon one of the special jurymen returned on the panel:—Held, that this was no ground of challenge to the array for unindifferency on the part of the sheriff. Rex v. Edmonds, 4 B. & A. 471.

On the trial at Nisi Prius of an indictment for libel, on which only three special jurors appeared, the counsel for the prosecution prayed a tales, and the defendant challenged the array of the tales, on the ground that the sheriff was a subscriber to a society who were the prosecutors; and on issue taken on this challenge, two triers were appointed by the court, who found in favour of the challenge, and the cause was made a remanet. Rex v. Dolby, 1 C. & K. 238—Abbott.

The court will not compel the prosecutors to give a list of their names to the defendant previously to striking a special jury, but will give such directions, by consent of the prosecutors, as shall prevent prejudice accruing to the defendant in consequence of such list not being furnished. Reg. v. Nicholson, 8 D. P. C. 422; 4 Jur. 558.

Talesmen. — Where, on an indictment for the publication of a libel, (appointed to be tried by a special jury), a tales panel was quashed for unindifferency in the sheriff:—Held,

that a writ of venire facias juratores might be awarded to the coroner of the county, although two of the special jurors summoned attended on a former occasion; and upon a prayer for an award of a tales de circumstantibus at nisi prius, it is not compulsory on the coroner or sheriff to select the talesmen from among the bystanders accidentally in court; but they may be chosen from among persons previously appointed by the coroner or sheriff to be in attendance, in expectation that a tales would be necessary. Rex v. Dolby, 3 D. & R. 311; 2 B. & C. 104.

On the trial of an information for a libel, only ten special jurymen appeared, and two talesmen were accordingly sworn to fill up the jury:—Held, to be no ground for a new trial that two of the non-attending special jurymen named in the panel had not been summoned to attend, although it appeared that this fact was unknown to the defendant until after the trial was over. Rex v. Hunt, 4 B. & A. 430.

Since 7 & 8 Will. 3, c. 32, talesmen can only be taken from the panel of the jury summoned to try the other causes, and not from the bystanders. Rex v. Hill, 1 C. & P. 667—Garrow.

On the trial of a quo warranto, which has been made a special jury cause, jurors who have been summoned to try prisoners on the crown side of the assize are not thereby qualified to act as talesmen. v. Tipping, 1 C. & P. 668—Gurney.

The warrant for a tales on a trial in a county palatine must come from the king's attorney-general. Rex v. Lambe, 4 Burr. 2171.

Semble, that, in an information at the suit of the attorney-general, a tales may be prayed for the crown without his warrant, though he is not present; but not for the defend-Att.-Gen. v. Parsons, 2 M. & W. 23; 2 Gale, 227.

#### 4. View.

Where, on the trial of a rape, it was wished on the part of the prisoner that the jury should see the place at which the offence was said to have been committed, and the place was so near to the court that the jury could have a view without inconvenience, the judge allowed a view, although the prosecutor did not consent to it. Reg. v. Whalley, 2 C. & K. 376—Gaselee, Serjt.

The court will only under peculiar circumstances grant a view in an indictment for perjury; but a view will be refused if there is any risk of its misleading the jury. Anon.,

2 Chit. 422.

An inspection by the jury of the locus in quo may be directed by the court in a criminal case. Reg. v. Whalley, 2 Cox, C. C. 231—Maule.

## 5. Locking up.

If after a jury is locked up to consider their verdict in a capital case one of them is ill, the judge will allow a medical man to see him, and anything which the medical man in his discretion will give him bona fide as medicine he may have, but not sustenance. Reg. v. Newton, 3 C. & K. 85; 13 Q. B. 716; 13 Jur. 606; 18 L. J., M. C. 201; 3 Cox, C. C. 489.

After a trial for murder had commenced, it was ascertained that a witness had not arrived, but was expected by a train. The judge ordered the jury to be locked up until the arrival of the witness, had another jury called, and proceeded with another cause. Reg. v. Fos-

ter, 3 C. & K. 201-Maule.

# 6. Discharge of.

After the jury has retired to consider their verdict in a criminal case, whether felony or misdemeanor, and has remained in deliberation a full and sufficient time without being able to agree upon a verdict, it is in the discretion of the judge to dis-

charge them if there is no reasonable prospect of their agreeing upon a verdict. Winsor v. Reg. (in error), 6 B. & S. 143; 1 L. R., Q. B. 289; 12 Jur., N. S. 91; 35 L. J., M. C. 121; 14 W. R. 423; 14 L. T., N. S. 195. Affirmed on appeal, 1 L. R., Q. B. 390; 12 Jur., N. S. 561; 35 L. J., M. C. 161; 14 W. R. 695; 14 L. T., N. S. 567—Exch. Cham.

The exercise of such discretion by a judge cannot be reviewed by a

court of error. Ib.

The maxim, that a man cannot be put in peril twice for the same offence, means that a man cannot be tried again for an offence upon which a verdict of acquittal or conviction has been given, and not that a man cannot be tried again for the same offence where the first trial has proved abortive, and no verdict

was given. Ib.

Where a man was indicted, pleaded not guilty, and was given in charge to the jury, who retired to deliberate, and had not agreed upon a verdict by the time all the rest of the business before the court was finished, when they were discharged by the judge and the prisoner remanded:—Held, that the dismissal of the jury was equivalent to an acquittal, and that he might lawfully be put upon his trial the second time. Req. v. Davison, 2 F. & F. 250; 8 Cox, C. C. 360—Pollock, Martin and Hill.

A jury may be discharged by consent, after having been charged. Reg. v. Deane, 5 Cox, C. C. 501.

Where, in case of misdemeanor, the jury is improperly and against the will of the defendant, discharged by the judge from giving a verdict after the trial has begun, this is not equivalent to an acquittal, nor does it entitle the defendant quod eat sine die. Reg. v. Charlesworth, 1 B. & S. 460; 9 Cox, C. C. 44; 8 Jur., N. S. 1091; 31 L. J., M. C. 25; 9 W. R. 842; 5 L. T., N. S. 150; S. C. at Nisi Prius, 2 F. & F. 326.

In the course of the trial and during the examination of witnesses one of the jurors had, without leave, and without it being noticed by any one, left the jury-box and also the court house, whereupon the court discharged the jury without giving a verdict, and a fresh jury was empanneled. The prisoner was afterwards tried and convicted before a fresh jury:—Held, that the course pursued was right. Reg. v. Ward, 17 L. T., N. S. 220; 10 Cox, C. C. 573; 16 W. R. 281—C. C. R.

In a case of felony, capital or otherwise, the judge has a discretionary power, in case of evident necessity, to discharge the jury without giving a verdict, and such discharge is no bar to a fresh trial of the accused on the same indictment. Winsor v. Reg. (in error), 7 B. & S. 490—Exch. Cham.

The discretion of the judge in exercising this power cannot be reviewed by any legal tribunal. *Ib*.

## 7. Jury Process.

(15 & 16 Vict. c. 76, ss. 104, 105.)

The jury process in an indictment for a conspiracy made returnable on one of the three days before full term; and on the same day a continuance by a new venire was awarded, is not erroneous; inasmuch as the return day was conformable to 1 Will. 4, c. 3, s. 2, and the court, though not sitting for the dispatch of business before full term, might award the continuances on the return days. Wright v. Reg. (in error), 14 Q. B. 148; 14 Jur. 305—Exch. Cham.

Held, also, that, even if there had been a discontinuance in the jury process, the defendant waived the objection by afterwards pleading guilty to the indictment. *Ib*.

Two defendants being indicted for conspiracy, one of them cannot, on a writ of error, object to a discontinuance in the process against the other. *Ib*.

An indictment at quarter sessions contained two counts: one charging a stealing of monies above the value of 5l. in a dwelling-house; the other charging simply a stealing of monies of the same description as those contained in the first. The jury process directed the jury to be summoned to inquire if the prisoners were guilty of the felony in the indictment specified; and the verdict found them guilty of the felony aforesaid. Upon that verdict they were adjudged to be transported for fourteen years. The judgment was reversed in the Queen's Bench, with a direction that a venire de novo should be awarded by the sessions:—Held, first, that the jury process had been misawarded in the first instance, and therefore a venire de novo had been properly awarded by the Queen's Bench; and that it was no objection that judgment had been given upon the prisoners by the sessions. Campbell v. Reg. (in error), 11 Q. B. 799; 12 Jur. 117; 17 L. J., M. C. 89—Exch. Cham.

Held, secondly, that the direction to award a venire de novo was void, inasmuch as the sessions, being a court of oyer and terminer, is not an inferior court, and is a continuing court of oyer and terminer. Ib.

The record in an indictment set out an award of the venire to the sheriff, which required him to return "good and lawful men of the county," and stated that the sheriff returned the persons following (naming them), but the return did not state that the persons named were "good and lawful men of the county":—Held, that the jurors must be taken to have been good and lawful men of the county. Mansell v. Reg. (in error), 8 El. & Bl. 54; Dears. & B. C. C. 375; 27 L. J., M. C. 4.

The 16 & 17 Vict. c. 113 (Ir.), s. 109, which prescribes the summoning of jurors to try civil as well

as criminal issues, according to the precept of the judge of assize, does not interfere with the common law authority of justices of gaol delivery to order a jury to be returned instanter, when, from the panel having been quashed, or for any other reason, a sufficient jury cannot otherwise be had. O'Neill v. Reg., 6 Cox, C. C. 495; 4 Ir. C. L. R. 221.

#### XLV. COUNSEL.

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- Right of Reply, 532.
   Summing up Evidence, 533.

## 1. Appearance and Defence by.

By 6 & 7 Will. 4, c. 114, s. 1, "persons tried for felonies, after the "close of the case for the prosecu-"tion, may make full answer and "defence thereto by counsel."

By s. 2, "in all cases of summary convictions, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-exmined by counsel."

Several defendants charged in an indictment with different illegal acts severed in their defence, and being convicted and sentenced to different punishments, brought separate writs of error:—Held, that they were entitled to appear by separate counsel, and that such counsel were severally entitled to reply. O'Connell v. Reg. (in error), 11 C. & F. 155; 9 Jur. 25.

On a trial for murder, the prisoner objecting to be defended by counsel, but, in the result, allowing counsel to act for him, he was not afterwards allowed to raise any objection to the proceeding, and a fiat for a writ of error was refused. Reg. v. Southey, 4 F. & F. 864—Mellor.

Where a party had pleaded guilty | constitute the judge counsel for the at the Central Criminal Court to an | prosecution, and leave him to make Fish. Dig.—40.

indictment for libel, and affidavits were filed both in mitigation and aggravation, the judges refused to hear counsel on either side, but formed their judgment of the case by reading the affidavits. Reg. v. Gregory, 1 C. & K. 228.

Queen's Counsel.]—On the trial of a criminal information a Queen's counsel ought not to be counsel for the defendant without a licence from the Queen, or at least a letter from the secretary of state; and it is not enough that an application for a licence has been sent to the secretary of state from an assize town in the country, to which no answer has been received at the time of the cause being tried. Reg. v. Bartlett, 2 C. & K. 321—Wilde, C. J.

Where a Queen's counsel was instructed to argue a criminal case for a defendant, on a point reserved, but at the time fixed for the argument, had not obtained a licence from her Majesty to argue against the crown, but only a certificate from the secretary of state's office the court directed the argument to stand over for such license to be obtained. Reg. v. Jones, 9 C. & P. 401; 2 M. C. C. 171.

Assignment by the Court.]—The court may properly request counsel to give his honorary services to a prisoner. Aliter with an attorney. But the court will recommend that, in such cases, the crown should pay the fees both of counsel and attorney, as assigned. Reg. v. Fogarty, 5 Cox, C. C. 161.

On a trial for murder, the court refused to allow counsel to appear for a prisoner without his expressed assent. *Reg.* v. *Yscuado*, 6 Cox, C. C. 386—Erle.

The fiction of law in criminal cases is, that the judge is counsel for the prisoner. It is a violation of this principle, and indecent, to constitute the judge counsel for the prosecution, and leave him to make

out from the depositions a case against the prisoner. Therefore, all prosecutions ought to be conducted by counsel, and the court will in all cases direct the depositions to be handed to counsel for that purpose. Reg. v. Page, 2 Cox, C. C. 221—Maule.

Order of Defending several Prisoners.]-Where the counsel for several prisoners cannot agree as to the order in which they are to address the jury, the court will call upon them, not in the order of their seniority, but in the order in which the names of the prisoners stand in the indictment. But where the counsel for one prisoner has witnesses to fact to examine, the counsel for another cannot be allowed to postpone his address to the jury until those witnesses have been examined. Reg. v. Barber, 1 C. & K. 434 — Gurney, Williams and Maule.

Where two prisoners are jointly indicted, and the second in the indictment only is defended by counsel, the latter will be permitted to address the jury before the other makes his statement, notwithstanding the rule established in Reg. v. Richards, 1 Cox, C. C. 62. Reg. v. Hazell, 2 Cox, C. C. 220—Williams.

Where one prisoner was indicted for stealing and the other for receiving, and the receiver was defended by counsel, but the principal felon was undefended, the court called upon the principal to make his statement to the jury before the counsel for the receiver was permitted to address them. Reg. v. Martin, 3 Cox, C. C. 56—Coleridge.

When several prisoners are defended by different counsel, the order of their defences is not to be determined by the seniority of their counsel at the bar, but on the precise offence charged against each; and in a well-drawn indictment, the order in which the prisoners

should be called on for their defence usually coincides with the order of their names in the indictment. Reg. v. Meadows, 2 Jur., N. S. 718—Erle.

Where several persons are indicted for the same offence, the order in which they should be called on to make their defence is not determined by the order in which their names stand in the indictment. Reg. v. Holman, 3 Jur., N. S. 722—Pollock.

Where two were indicted for the same offence, with a second count charging one of them as accessory after the fact, the one named first in the indictment, though he had no counsel, was heard in his defence before the other, who was defended by connsel. Reg. v. Thomas, 3 Jur., N. S. 272—Channell.

Where two were indicted, one for larceny and the other as a receiver of the stolen property, the latter of whom is defended by counsel, and the former not, the counsel for the receiver should make his defence first. Reg. v. Belton, 5 Jur., N. S. 276—Martin.

# 2. Addressing the Jury.

In opening the case for the prosecution in felony, counsel ought to state declarations proposed to be proved, as well as facts. Rex v. Orrell, 1 M. & Rob. 467; S. P., Rex v. Davis, 7 C. & P. 785; Rex v. Hartel, 7 C. & P. 773—Parke.

Unless the declarations amount to a confession, and then they should not be opened. Rex v. Davis, 7 C. & P. 785; S. P., Rex v. Hartel, 7 C. & P. 773—Parke.

Where there is counsel for the prisoner, the counsel for the prosecution ought always to open the case; but he should not open if the prisoner has no counsel, unless there is some peculiarity in the facts of the case to require it. Rex v. Gascoigne, 7 C. & P. 772—Parke.

and in a well-drawn indictment, The counsel for the prosecution, the order in which the prisoners in opening a case of murder, has a

right to put hypothetically the case of an attack upon the character of any particular witness for the crown, and to state that, if such attack should be made, he should be prepared to rebut it; he has also a right to read to the jury the general observations of a judge, made in a case tried some years before, on the nature and effect of circumstantial evidence, if he adopts them as his own opinions, and makes them part of his own address to the Reg. v. Courvoisier, 9 C. & P. 362—Tindal and Parke.

If additional evidence is discovered during the progress of a case, the counsel for the prosecution is not at liberty to open the nature of such evidence in an additional address to

the jury. Ib.

A prisoner's counsel, in addressing the jury, will not be allowed to state anything which he is not in a situation to prove, or which is not already in proof; nor will he be allowed to state the prisoner's story. Reg. v. Beard, 8 C. & P. 142; S. P., Reg. v. Butcher, 2 M. & Rob. 228—Coleridge.

Counsel for the prosecution opening a case against one prisoner, statements made by that prisoner are not to be used except in a regular way of evidence. Reg. v. Gardner, 9

Cox, C. C. 332—Pollock.

Two were indicted for manslanghter, the counsel for one of them having addressed the jury on his behalf, the counsel for the second prisoner did the same, and called witnesses, whose evidence tended to shew negligence on the part of the first:—Held, that the counsel for the prisoner had a right to cross-examine the witnesses for the second, and then to address the jury again, confining himself to comments on the testimony the second prisoner had adduced. Reg. v. Woods, 6 Cox, C. C. 224.

If the prisoner's counsel has addressed the jury, the prisoner him-

self will not be allowed to address the jury also. Reg. v. Boucher, 8 C. & P. 141—Coleridge. S. P., Reg. v. Burrows, 2 M. & Rob. 124

–Bosanquet.

But on the trial of a case of shooting, with intent to do grievous bodily harm, there having been no person present at the time of the offence but the prosecutor and prisoner, the latter was, under these special circumstances, allowed to make a statement before his counsel addressed the jury. Reg. v. Malings, 8 C. & P. 242—Alderson.

But the privilege is not to be considered as a precedent with respect to the general practice in such cases. Reg. v. Walking, 8 C. & P. 243—

Gurney.

A prisoner charged with felony, who is defended by counsel, ought not to be allowed to make a statement in addition to the defence of counsel, unless under very particular circumstances; and the general rule ought to be, that a prisoner defended by counsel should be entirely in the hands of his counsel; and that rule should not be infringed on, except in very special cases. Reg. v.Rider, 8 C. & P. 539—Patteson.

It is the duty of the counsel for the prosecution to be assistant to the court in the furtherance of justice, and not act as counsel for any particular person or party. Reg. v. Thursfield, 8 C. & P. 269—Gurney.

Where no counsel is engaged for the prosecution, and the depositions are handed in by direction of the court, to a gentleman at the bar, he should consider himself as counsel for the crown, and act in all respects as he would if he had been instructed by the prosecutor; and should not consider himself merely as acting in assistance of the judge, by examining the witnesses.  $Reg. \ v.$ Littleton, 9 C. & P. 671—Parke.

A prosecutor conducting his case in person, and who is to be examined as a witness in support of the indictment, has no right to address the jury as counsel. Rex v. Brice, 2 B. & A. 606; 1 Chit. 352.

But on the trial of an indictment for perjury, the judge will allow the defendant to address the jury and cross-examine the witnesses, and his counsel to argue points of law, and suggest questions to him for the cross-examination of the witnesses. Rex v. Parkins, 1 C. & P. 548; R. & M. 166—Abbott.

Where, on an information for a misdemeanor, the defendant conducts his own defence, counsel may be heard on any point of law which arises. Rex v. White, 3 Camp. 98

-Ellenborough.

But he cannot have the assistance of counsel in examining and crossexamining witnesses, and reserve to himself the right of addressing the Ib.jury.

Not more than two counsel are entitled to address the court for a prisoner during the trial upon a point of law. Reg. v. Bernard, 1 F. & F.

A foreigner, indicted for felony, being unable to speak English, the proceedings were explained to him by an interpreter. He was defended by counsel, who cross-examined the witnesses for the prosecution; at the close of which the judge, through the interpreter, acquainted the prisoner that he might choose whether he would make his defence himself or allow his counsel to make it for him, but that both could not be heard. Reg. v. Teste, 4 Jur., N. S. 244—Williams.

# 3. Right of Reply.

In General Cases. —Where counsel for the prosecution, intending to put in evidence in reply, begins his reply to the jury before doing so per incuriam, he ought not, therefore, to be debarred from the right to put in his evidence in the usual course. Reg. v. White, 2 Cox, C. C. 192.

poaching, the defence being on the question of identity, one of them calling witnesses to prove an alibi, the other calling no witnesses, the counsel for the prosecution was allowed a general reply on the whole case as against both. Reg. v. Briggs, 1 F. & F. 106—Williams.

Where there are several prisoners, and they sever in their defences, if one should call witnesses and the others not, the right of reply is in practice confined to the case against the prisoner who has called witness-Reg. v. Burton, 2 F. & F. 788

-Wightman.

The counsel for the crown, where the crown is the defendant in a writ of error, is not necessarily entitled to the final reply, though the crown is the real litigant party. O' Connell v. Reg. (in error), 11 C. & F. 155; 9 Jur. 25.

Three were indicted for murder, and witnesses were called for the defence of one only:—Held, that the counsel for the prosecution was entitled to reply generally, and was not to be limited in his reply as against the prisoner for whom the witnesses were called, although the evidence adduced for the one did not affect the case as it respected the other two, but if the evidence against two affect them with different offences, such as larcenv and receiving, and one calls witnesses, there is no right of reply against both. Reg. v. Blackburn, 3 C. & K. 330; 6 Cox, C. C. 333—Talfourd.

The prosecuting counsel ought not to reply where witnesses are called to character only. Patteson's case, 2 Lewin, C. C. 262—Patteson.

A prosecutor's counsel has, in strictness, the right of reply, though the counsel for the prisoner only calls witnesses to character. Rex v. Stannard, 7 C. & P. 673—Patteson and Williams.

A. was charged with feloniously carnally knowing and abusing a girl under ten. B. was charged Two being indicted for night with being present, aiding and abet-

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ting. A.'s counsel called no witnesses; B., who had no counsel, called a witness to prove an alibi for A.:—Held, that the evidence was in effect evidence for A., and that, in strictness, the counsel for the prosecution had a right to reply on the whole case, but that it was summum jus, and ought to be exercised with great forbearance. Reg. v. Jordan, 9 C. & P. 118—Williams.

A statement of facts not intended to be proved gives a reply to the counsel for the prosecution. Reg. v. Butcher, 2 M. & Rob. 228—Coleridge.

It is entirely at the discretion of the prosecutor's counsel, whether he will exercise his right of reply or not. Rex v. Whiting, 7 C. & P.

771—Bolland.

By the Attorney or Solicitor-General.]—The attorney-general may reply with new matter in collateral issues, though no evidence is given for the prisoner. Rex v. Radcliffe, 1 W. Bl. 3.

Where the attorney-general or a king's counsel states that he appears officially to conduct a prosecution on an indictment for misdemeanor, he is entitled to reply, though the defendant calls no witness. Rex v. Marsden, M. & M. 439—Tenterden.

Martin, B., intimated that he thought the right of reply on behalf of the crown a bad practice, and that he should confine the right to the attorney-general of England in person. Reg. v. Christie, 1 F. & F. 75.

The right of reply, where no evidence is called for the defence on behalf of the crown, in Mint cases was not admitted. *Reg.* v. *Taylor*, 1 F. & F. 535—Byles.

In a prosecution by the post-office for a felony, it being stated by the counsel for the prosecution that he appeared as representative of the attorney-general. On the ground of his representing the attorney-general, he was entitled to reply without reference to the prisoner's having called witnesses or not. *Reg.* v. *Gardner*, 1 C. & K. 628—Pollock.

In conducting prosecutions for the post-office, where the solicitor-general appears on behalf of the attorney-general, he has, on the part of the crown, the right to reply on the whole case, although the prisoner calls no witnesses. Reg. v. Toakley, 10 Cox, C. C. 406—Mellor; S. P., Reg. v. Barrow, 10 Cox, C. C. 407—Gurney, Recorder.

The attorney-general for the county palatine, though prosecuting in person, has no right to reply. Reg. v. Christie, 7 Cox, C. C. 506.

In a prosecution directed by the poor law board, counsel for the crown cannot claim the right to reply where the prisoner calls no witnesses. *Reg.* v. *Beckwith*, 7 Cox, C. C. 505—Byles.

## 4. Summing up Evidence.

By 28 & 29 Vict. c. 18, s. 2, "if "any prisoner or prisoners, defend-"ant or defendants, shall be defend-"ed by counsel (and by s. 9, the "word counsel includes attorneys "where attorneys are allowed by "law, or by the practice of any "court, to appear as advocates), "but not otherwise, it shall be the "duty of the presiding judge, at "the close of the case for the prose-"cution, to ask the counsel for each "prisoner or defendant so defended "by counsel whether he or they in-" tend to adduce evidence; and in "the event of none of them there-"upon announcing his intention to "adduce evidence, the counsel for "the prosecution shall be allowed "to address the jury a second time "in support of his case, for the pur-" pose of summing up the evidence "against such prisoner or prisoners, "or defendant or defendants;

"And upon every trial for felony or misdemeanor, whether the pris-

"oners or defendants, or any of them, shall be defended by counsel or not, each and every such prisoner or defendant, or his or their counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively;

"And after the conclusion of "such opening, or of all such opening, if more than one, such prismorer or prisoners, or defendant or "defendants, or their counsel, shall be entitled to examine such witmesses as he or they may think fit, and when all the evidence is concluded, to sum up the evidence respectively; and the right of reply, and practice and course of proceedings, save as hereby altered, shall he as at present."

The counsel for the prosecution ought not, in summing up the evidence, to make observations on the prisoner's not calling witnesses, unless at all events it has appeared that he might be fairly expected to be in a position to do so. Neither ought counsel to press it upon the jury, that, if they acquit the prisoner, they may be considered to convict the prosecutor or prosecutix of perjury. Reg. v. Puddick, 4 F. & F. 497—Crompton.

Witnesses merely called as to character do not give the counsel for the prosecution a reply. Reg. v. Dowse, 4 F. & F. 492—Pigott.

It being a general principle of criminal procedure, that counsel for the prosecution should consider themselves not merely as advocates for a party, but as ministers of justice, and not as struggling for a vertice, and not as struggling for a vertice, but as assistants in the ascertainment of truth according to law. Reg. v. Berens, 4 F. & F. 842—Blackburn.

Therefore, counsel for the prosecution ought not to exercise their right of summing up the evidence where the prisoner calls no witnesses, unless counsel really, in their discretion, deem it to be necessary

for the purposes of justice. Ib.: S. P., Reg. v. Webb, 4 F. & F. 862— Mellor.

A. & B. were indicted for manslaughter; the counsel of A. called a witness, who gave evidence which brought home the crime to B., whereupon his counsel was allowed to examine the witness and address the jury after A.'s counsel had closed his case and had summed up his evidence; the counsel for the prosecution being entitled to a general reply. Reg. v. Copley, 4 F. & F. 1097—Smith.

It being a general principle of criminal procedure, that counsel for the prosecution should themselves not merely as advocates for a party, but as ministers of justice, and not as struggling for a verdict, but as assistants in the ascertainment of truth according to law; therefore, counsel for the prosecution ought not to exercise their right of summing up the evidence where the prisoner calls no witnesses, unless counsel really, in their discretion, deem it to be necessary for the purposes of justice. Reg. v Berens, 4 F. & F. 842—Blackburn.

Under 28 & 29 Vict. c. 18, s. 2, the counsel for the prosecution ought not, when the prisoner calls no witnesses, to sum up the evidence. Reg. v. Webb, 4 F. & F. 862—Mellor.

## XLVI. EVIDENCE.

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#### 1. Confessions and Admissions.

Free and Voluntary. —A prisoner's confession is sufficient ground for a conviction, although there is no other proof of his having committed the offence, or of the offence having been committed, if that confession was in consequence of a charge against the prisoner. Rex v. Eldridge, R. & R. C. C. 440.

A confession obtained without threat or promise from a boy fourteen years old, by questions put by a police officer in whose custody the boy was on a charge of felony, and when he had no food for nearly a whole day, is rightly received. Rex v. Thornton, 1 M. C. C. 27.

A voluntary confession of felony made by a prisoner on his examination before a magistrate, and reduced by the magistrate into writing, may be given in evidence on the trial, though the magistrate has neglected, and the prisoner has re-Rex v. Lambe, 2 fused, to sign it. Leach, C. C. 552.

The confession of a prisoner before a magistrate is a sufficient ground to warrant a conviction, although there is no positive proof aljunde that the offence was commit-Rex v. White, R. & R. C. C. 508; S. P., Rex v. Tippet, R. & R. C. C. 509.

Where a knowledge of any fact |is obtained by means of a confes-

sion which cannot be received, the party should be acquitted; unless the fact would be sufficient to warrant a conviction without any confession leading to it. Rex v. Harvey, 2 East, P. C. 658—Eldon.

If a confession is improperly obtained, it is a ground for excluding evidence of the confession, and of any act done by the prisoner in consequence towards discovering the property, unless the property is actually discovered thereby. Jenkins, R. & R. C. C. 492.

The confession of a girl fifteen years old, occasioned by many applications by the prosecutor's relations and neighbors, amounting to threats and promises, is not receivable. Rex v. Simpson, 1 M. C. C. 410.

So a confession obtained from a servant through hopes and threats held out by the wife of the master and prosecutor, is inadmissible. Rev v. Upchurch, 1 M. C. C. 465.

A second confession made under the same influence as the first is not receivable. Meynell's case, 2 Lewin, C. C. 122 — Taunton; S. P., Sherrington's case, Ib. 123—Patte-

A prisoner charged with murder, being a few days short of fourteen, was told by a man who was present when he was taken up, but not by a constable, "Now kneel you down, I am going to ask you a very serious question, and I hope you will tell me the truth, in the presence of the Almighty"; the prisoner, in consequence, made certain statements:—Held, strictly admissible. Rex v. Wild, 1 M. C. C. 452.

A statement of a prisoner is admissible, although he was previously told that whatever he said "would be used against him." Reg. v. Chambers, 3 Cox, C. C. 92 -Rolfe.

A voluntary confession which enters into minute details of a crime, and states that the prisoner was

one of the party concerned in its | commission, is evidence to go to a jury when the corpus delicti is proved by evidence aliunde, although the witness proving such corpus delicti swears that the prisoner was not of the party engaged in the commission of the crime. Reg. v. Sutcliffe, 4 Cox, C. C. 270.

The prosecutor and a policeman went into a room in the house of one of the prisoners, in which were assembled the two prisoners and W. The policeman then charged one of the prisoners and W. with stealing the prosecutor's hops, and the other prisoner with feloniously W. then said, receiving them. "Well, John, you had better tell Mr. Walker" (the prosecutor) "the truth." Neither the prosecutor nor the policeman dissented from or remarked upon this advice, but the prisoner John thereupon made a statement amounting to a confession; and subsequently, whilst being conveyed to prison, of his own accord, made a further statement: -Held, that the statements were admissible. Reg. v. Parker, L. & C. 42; 8 Cox, C. C. 465; 7 Jur., N. S. 586; 30 L. J., M. C. 144; 9 W. R. 699; 4 L. T., N. S. 451.

A prisoner charged with felony, being in custody, handcuffed, in the house of the prosecutor, after a conversation with the prosecutor and another person, in which he was told that they would do all they could for him, said—" If the handcuffs are taken off, I will tell you where I put the property ": — Semble, that this statement was receivable, and could not be objected to, either as a confession made under a promise, or a statement obtained by duress. Rex v. Green, 6 C. & P. 655—Bosanquet and Taunton.

A witness stated, that a prisoner charged with felony asked him if he had better confess; and the witness replied, that he had better not confess, but that the prisoner might

it should go no further. The prisoner made a statement: — Held, that it was receivable on the trial. Rex v. Thomas, 7 C. & P. 345— Coleridge.

The prosecutor called the prisoner to his room and said, "Jarvis, I think it is right I should tell you that, besides being in the presence of my brother and myself, you are in the presence of two officers of the police, and I should advise you that, to any question that may be put to you, you will answer truthfully, so that if you have committed a fault you may not add to it by stating what is untrue." A letter was then produced, which Jarvis said he had not written, and the prosecutor then added, "Take care, Jarvis; we know more than you think we know":—Held, that the answer of the prisoner in the nature of a confession was admissible. Reg. v. Jarvis, 17 L. T., N. S. 178; 16 W. R. 111; 1 L. R., C. C. 96; 37 L. J., M. C. 1; 10 Cox, C. C. 574.

The court will not exclude a statement made in the prisoner's presence by another party to a third person, merely because some inducement has been held out to that party to make it; but very little weight ought to be attached to the fact of no answer being given to such statement by the prisoner, as he would not know whether it would be better for him to be silent or not. Reg. v. Jankowski, 10 Cox, C. C. 365—Smith.

A person being in custody, and having been charged with setting fire to some bobbins of cotton in a mill, was shewn a piece of paper (partially burnt) with writing on it, which had been found among the burnt property. Without receiving any caution whatever, he was then asked by the policeman whose writing it was, and what he had done with the remainder of it: —Held, that what he said in anssay what he had to say to him, for wer to the questions was receivable, as the questions did not amount to a threat. Reg. v. Regan, 17 L. T., N. S. 325—Shee.

A policeman asked a prisoner, who was suspected of having made away with her illegitimate child, to tell him where it was. She refused to do so, upon which he said · · that if she did not tell she might get herself into trouble, and it would be the worse for her. Then she made a statement:—Held, that the statement was inadmissible. Reg. v. Coley, 10 Cox, C. C. 536 ---Mellor.

Under the Influence of Admonitions.] — Where a prisoner was charged with stealing a guinea and two promissory notes, and the prosecutor told him that it would be better for him to confess:—Held, that after this admonition, the prosecutor might prove that the prisoner brought him a guinea and a 51. note, which he gave up to the prosecutor as the guinea and one of the notes that had been stolen from Rex v. Griffin, R. & R. C. him. C. 152.

Where, on the apprehension of a prisoner for larceny, persons having nothing to do with the apprehension, prosecution or examination of the prisoner advised him to tell the truth and consider his family:-Held, that such admonition was no ground for excluding a confession made an hour afterwards to the constable in prison. Rex v. Row, R. & R. C. C. 153.

A. and his wife were separately in custody on a charge of receiving stolen property. A person who was in the room with A. said—"I hope you will tell because Mrs. G. (the prosecutrix) can ill afford to lose the money"; and the constable then said—"If you tell where the property is, you shall see your wife": - Held, that a statement made by A. afterwards was admissible. Rex v. Lloyd, 6 C. & P. 393—Patteson.

If a prisoner is told, "You had better split, and not suffer for all of them"; this is such an inducement to confess as will exclude what the prisoner said in consequence of it. Rex v. Thomas, 6 C. & P. 353— Patteson.

So, where the witness said to the prisoner, "It would have been better if you had told at first." Rev v. Walkley, 6 C. & P. 175 — Gurnev.

Under the Influence of Drink. -A statement, made by a prisoner when he is drunk, is receivable in evidence; and semble, that if a constable gave him liquor to make him so, in the hope of his saying something, that will not render his statement inadmissible, but it will be matter of observation for the judge in his summing up. Spilsbury, 7 C. & P. 187.

Under the Influence of Promises.]—Confessions, obtained in consequence of promises or threats, cannot be given in evidence; but evidence of facts resulting from such inadmissible confessions may be received. Rex v. Warwickshall, 1 Leach, C. C. 263; 2 East, P. C. 658; S. P., Rex v. Mosey, 1 Leach, C. C. 265, n.

A confession, induced by saying, "Unless you give me a more satisfactory account, I will take you before a magistrate," or by saying, "Tell me where the things are, and I will be favourable to you," cannot be given in evidence. Rex v. Thompson, 1 Leach, C. C. 291; S. P., Rex v. Cass, 1 Leach, C. C. 293, n.

Where the prosecutor asked the prisoner, on finding him, for the money which the prisoner had taken out of the prosecutor's pack, but before the money was produced said, "he only wanted his money, and if the prisoner gave him that he might go to the devil if he pleased"; upon which the

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prisoner took 11s.  $6\frac{1}{2}d$  out of his pocket, and said, "it was all he had left of it": - Held, that the confession could not be received. Rex v. Jones, R. & R. C. C. 152; S. P., Rex v. Clarke, Car. C. L.

A prosecutor said to the prisoner -"I should be obliged to you if you would tell us what you know about it; if you will not, we, of course, can do nothing ": - Held, that this was such an inducement to confess, as would exclude what the prisoner said. Rex v. Partridge, 7 C. & P. 551—Patteson.

Where a prisoner in a gaol on a charge of felony asked the turnkey of the gaol to put a letter in the post for him, and after his promising to do so the prisoner gave him a letter addressed to his father, and the turnkey, instead of putting it into the post, transmitted it to the prosecutor:-Held, that the letter was admissible against the prisoner, notwithstanding the manner in which it was obtained. Rex v. Derrington, 2 C. & P. 418—Garrow.

A. was in custody on a charge of murder. B., a fellow prisoner, said to him-"I wish you would tell me how you murdered the boy—pray split." A replied—"Will you be upon your oath not to mention what I tell you." B. went upon his oath that he would not tell. A. then made a statement:—Held, that this was not such an inducement to confess as would render the statement inadmissible. Rex v. Shaw, 6 C. & P. 372—Patteson.

A servant was charged with attempting to set fire to her master's house. It was proved that the furniture in two of the bed-rooms was on fire, and a spoon and other articles were found in the sucker of the pump. The master told the prisoner that if she did not tell the truth about the things found in the pump, he would send for the constable to take her, but he said

-Held, that this was such an inducement to confess as would render inadmissible any statement that the prisoner made respecting the fire, as the whole was to be considered as one transaction. Reg. v.Hearn, Car. & M. 109 — Coltman.

Where a prisoner said to the officer in whose custody he was, "If you will give me a glass of gin, I will tell you all about it ":-Held, that a confession made in consequence of his having received some giu was inadmissible. Rex v. Sexton, 3 Russ. C. & M. 368.

A girl, accused of poisoning, was told by her mistress that if she did not tell all'about it that night, a constable would be sent for in the morning to take her before a magistrate; she then made a statement. which was held to be not admissi-Next day a constable was sent for, and as he was taking her to the magistrate, she said something to him, he having held out no inducement to her to do so:— Held, that this was receivable, as the former inducement ceased on her being put into the hands of the constable. Rex v. Richards, 5 C. & P. 318—Bosanquet.

A female servant being suspected of stealing money, her mistress, on a Monday, told her that she would forgive her if she told the On the Tuesday she was taken before a magistrate, and was discharged, no one appearing against On the Wednesday the superintendent of police went with her mistress to the Bridewell, and told her in the presence of her mistress that she "was not bound to say anything unless she liked, and that if she had anything to say her mistress would hear her"; but the superintendent, not knowing that her mistress had promised to for-give her, did not tell her that if she made a statement it might be given in evidence against her. The prisoner made a statement :- Held. nothing to her respecting the fire: that this statement was not receivable, as the promise of the mistress must be considered as still operating on the prisoner's mind at the time of the statement; but that, if the mistress had not been then present, it might have been otherwise. Reg. v. Hewett, Car. & M. 534—Patteson.

Under the Influence of a Reward or a Pardon.]—The mere knowledge by a prisoner of a handbill, by which a government reward and a promise of a pardon are offered in a case of murder, are not sufficient ground for rejecting a confession of such prisoner, unless it appears that the inducements there held out were those which led the prisoner to confess. Reg. v. Boswell, Car. & M. 584—Cresswell.

Where a prisoner desired that any handbill that might appear concerning a murder, with which he stood charged, might be shewn to him, and a handbill was shewn to him by a constable, by which a reward and a free pardon were offered to any but the person who struck the blow, and the prisoner three days afterwards made a statement, this statement was held to be receivable in evidence. *Ib*.

But where it was afterwards proved by another constable that the prisoner, on the night before he made the statement, said to him, that he saw no reason why he should suffer for the crime of another, and that as the government had offered a free pardon to any one concerned who had not struck the blow, he would tell all he knew about the matter: - The judge held, that the statement that had already been given in evidence was not properly receivable, and struck it out of his notes. Ib.

Several prisoners being in custody on a charge of murder, A., who was one of them, said to the chaplain of the prison, that he wished to see a magistrate, and

asked if any proclamation had been made, and any offer of par-The chaplain said that there had; but he hoped that A. would understand that he could offer him no inducement to make any statement, as it must be his own free and voluntary act. When A. saw the magistrate, he said that no person had held out any inducement to him to confess anything, and that what he was about to say was his own free and voluntary act and desire. A. then made a statement to the magistrate: — Held, that this statement was receivable against A. on his trial for the mur-Reg. v. Dingley, 1 C. & K. 637—Pollock.

A., a prisoner charged with murder, was visited by B., who was both a magistrate and a clergyman; B. told him, that if he was not the person who struck the fatal blow, and he would tell all he knew, he (B.) would use his endeavours and influence to prevent anything from happening to him; and that if he (A.) did not make a disclosure, some one else would probably do so. After this, B. wrote to the secretary of state, who returned an answer that mer- $\mathbf{cy}$  could not be extended to  $\mathbf{A}$ .; which answer was communicated by B. to A. After this A. sent for the coroner and wished to make a The coroner told him statement. that if he did so it would be used in evidence against him. The prisoner made a confession: - Held, that this confession was admissible. Rex v. Clewes, 4 C. & P. 221-Littledale.

Statements made by a prisoner with the knowledge of a reward and a pardon to any but the actual perpetrator of the offence, and under circumstances which led to the belief that such statements were made with the hope of receiving the reward, and being allowed to give evidence as a witness on the

part of the crown, are inadmissi-Reg. v. Blackburn, 6 Cox, ble. C. C. 333—Talfourd.

A printed copy of a reward offered for such private information and evidence as would lead to the detection and conviction of a murderer or the murderers, and a statement that the secretary of state would recommend the grant of a pardon to any accomplice, not having been the actual perpetrator of the murder, who should give such evidence, was hung up in the magistrate's room in a county gaol. prisoner, who could read, made a statement to the governor of the gaol in this room, and before that statement inquired whether he could give evidence, but did not say that he made the statement in that expectation, or in the hope of getting the reward, and before making the statement he was told it would be used against him:—Held, that such statement was inadmissible. Ib.

But statements made, and anonymous letters written by a prisoner before his apprehension, are not inadmissible merely on the ground of the prisoner's knowledge of the offer of the reward and pardon, or by reason of his having been employed by the police authorities and paid money for his support, under the belief that he was an important witness for the crown. Ib.

Under the Influence of Threats.] -The captain of a vessel said to one of his sailors, suspected of having stolen a watch, "That unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as we get to Newcastle; you are a damned villain, and the gallows is painted in your face ":-Held, that a confession made by a sailor after this threat was not receivable on the trial for his felony. Rex v. Parratt, 4 C. & P. 570—Alderson.

prisoner's master), but who did not live with her father, and was not the prisoner's mistress, whilst she had temporary charge of the prisoner, who had been previously taken into custody, said to her, "I am very sorry for you; you ought to Tell me the have known better. truth whether you did or no. Do not run your soul into more sin, but tell the truth"; when the prisoner made a full confession:—Held, that there was no threat or inducement held out to the prisoner. Reg.v. Sleeman, 6 Cox, C. C. 245; 2 Č. L. R. 29; 17 Jur. 1082; Dears. C. C. 249; 23 L. J., M. C. 19.

Upon the trial of an indictment for an unnatural crime with a mare, one of the witnesses, in the presence of T., the owner of the mare, threatened to give the prisoner in charge of the police if he did not tell what business he had in T.'s stable, where the mare was. that moment the charge had not been made known to the prisoner, but was immediately afterwards, and then he confessed:—Held, that this confession was inadmissible, having been made under the influence of a threat held out to him in the presence of one, who, being the owner of the mare, was likely to prosecute for the offence. Reg. v. Luckhurst, 6 Cox, C. C. 243; 23 L. J., M. C. 19; Dears. C. C. 245; 17 Jur. 1082; 2 C. L. R. 129.

A girl was charged with administering poison with intent to murder. The surgeon said to her, "You are under suspicion of this, and you had better tell all you know." After this, she made a statement to the surgeon:—Held, that that statement was not admissible. Rex v. Kingston, 4 C. & P. 387—Littledale and Parke.

A constable said to a person charged with felony, "It is of no use for you to deny it, for there is the man and boy who will swear they saw you do it":-Held, that A daughter of the prosecutor (the this was such an inducement as

would exclude evidence of what the prisoner said. Rex v. Mills, 6 C.

& P. 146—Gurney.

The prosecutor, in the presence of the constable, said to the prisoner, "It will be better for you to tell the truth, as it will save the shame of a search-warrant in your house." The statement was rejected. The constable then took the prisoner into a loft, and, in the absence of the prosecutor, the prisoner made a state-The evidence was rejected. Half an hour after, the constable took the prisoner to the stationhouse, and on the way cautioned him not to say anything, after which he made a statement :-Held, to be inadmissible, as the inducement was still operating. Reg. v. Collier, 3 Cox, C. C. 57—Williams.

An inducement or a threat offered by a master to one of two apprentices jointly accused of larceny will not, though offered in the presence of the other, preclude the reception in evidence of a confession immediately made by the other. Reg. v. Jacobs, 4 Cox, C. C. 54-Erle.

Obtained by Persons in Authority.] —It is the opinion of the judges that evidence of any confession is receivable, unless there has been some inducement held out by some person in authority. \_Reg. v. Taylor, 8 C. & P. 733—Patteson.

If a person, not in office or in authority, holds out to an accused party an inducement to confess, this will not exclude a confession made

to that person. Ib.

Where the house of Mr. L. had been on fire, and the prisoner, a female servant there, was sent for into the parlour, where Mr. W., a person not in authority, in the presence of Mrs. L., held out an inducement to the prisoner to confess respecting the fire, Mrs. L. expressing no dissent:-Held, that a confession made after this was not re- goods of two persons in partner-

ceivable, as the inducement must be taken as if it had been held out by Mrs. L., who was a person in authority over the prisoner. Ib.

The wife of a person in whose house an offence is committed, such person not being prosecutor, nor engaged in the apprehension, prosecution or examination of the offender, and the offence not being in any way connected with the management of the house, is not a person in authority within the rule which excludes confessions. Reg. v. Moore, 2 Den. C. C. 522; 3 C. & K. 153; 16 Jur. 621; 21 L. J., M. C. 199; 5 Cox, C. C. 555.

Upon a trial for child murder the prisoner's confession to a surgeon, who was attending her, was offered. Before the surgeon came in, her mistress had told her that she had hetter speak the truth; and she had said, in answer, that she would tell it to the surgeon; but the husband of the mistress was not the prosecutor: - Held, that as the offence was not an offence against the mistress, she was not a person in such authority that the inducement which she had held out would exclude the confession, which was consequently admissible. 1b.

A daughter of the prosecutor (the prisoner's master), but who did not live with her father, and was not the prisoner's mistress, whilst she had temporary charge of the prisoner, who had been previously taken into custody, said to her, "I am. sorry for you; you ought to have known better. Tell me the truth, whether you did it or no. Do not run yeur soul into more sin, but tell the truth"; when the prisoner made a full confession:—Held, that the confession was not made to a person in authority, and was therefore admissible. Reg. v. Sleeman, Dears. C. C. 249; 17 Jur. 1082; 23 L. J., M. C. 19; 6 Cox, C. C. 245; 2 C. L. R. 129.

On an indictment for stealing the

ship, a confession made after an inducement to confess has been held out in their absence by the wife of one of them, who assisted in the management of their business, is inadmissible. Reg. v. Warringham, 2 Den. C. C. 447, n.; 15 Jur. 318-Parke.

A man and a woman being apprehended on a charge of murder, another woman, who had the female prisoner in custody, told her that she "had better tell the truth, or it would lie upon her, and the man would go free":-Held, that a declaration of the female prisoner made to this woman afterwards was not receivable. Rex v. Enoch, 5 C. & P. 539—Parke.

A married woman was apprehended on a charge of felony, and her husband, in the presence of the constable, held out an inducement She then made to her to confess. a statement:—Held, that it was not receivable; as an inducement held out in the presence of the constable, was the same in effect as if it had been held out by him. Reg. v. Laugher, 2 C. & K. 225 — Pollock.

A constable who apprehended a prisoner, asked him what he had done with the tap he had stolen from the prosecutor's premises, and said-"You had better not add a lie to the crime of theft":-Held, that a confession made to the constable was not receivable. · Shepherd, 7 C. & P. 579—Gaselee.

A woman in custody, on a charge of murder, was, on arriving at the gaol, placed in a room alone with E., in order to be searched. was employed as searcher of female prisoners; but, except in that capacity, had no other duties or authority in the gaol. Whilst the usual search was being made, the prisoner said, "I shall be hung; I shall be sure to be hung"; and, shortly afterwards, "If I tell the truth, shall I be bung?" E., in

plied, "No, nonsense, you will not be hung; who told you so?"— Held, that a statement of the prisoner made to E. immediately afterwards was not receivable. Reg. v. Windsor, 4 F. & F. 360—Channell.

By Persons without Authority. -There is a difference of opinion among the judges, whether a confession made to a person who has no authority, after an inducement held out by that person, is receivable. Rex v. Spencer, 7 C. & P. 776 ---Parke.

The confession of a prisoner is evidence, although previously to it an inducement to confess had been held out by another person, if that person had no authority to do so. Rex v. Gibbons, 1 C. & P. 97— Park.

So a confession by a prisoner to a constable, who had held out no inducement, is evidence, although an inducement had been previously held out by a person in no office or authority. Rex v. Tyler, 1 C. & P. 129—Hullock.

Any person's telling a prisoner that it will be better for him to confess, will exclude a confession made to that person, although that person was not in any authority, as prosecutor, constable, or the like. Rex v. Dunn, 4 C. & P. 543; S. P., Rex v. Slaughter, 4 C. & P. 544.

To Chaplains. —Where a prisoner committed on a charge of murder sent for the chaplain to pray with him, who told him that, as the minister of God, he ought to warn him not to add sin to sin by attempting to dissemble with God, and that it would be important for him to confess his sins before God, and to repair as far as he could any injury he had done. The chaplain had two interviews with the prisoner, and considered he had made a great impression on him, but distinctly told him he did not wish order to soothe the prisoner, re- | him to confess. After this the prisoner made two confessions to the gaoler and the mayor, after having been warned of the consequences by both those persons:—Held, that these confessions were good evidence, and rightly received. Rex v. Gilham, Car. C. L. 51; 1 M. C. C. 186.

A chaplain to a workhouse had, in his spiritual capacity, frequent conversations there with the prisoner, who was charged with the murder of her child, but who was too ill to be removed from the work-Semble, that these conversations ought not to be adduced in evidence at the trial. Reg. v. Griffin, 6 Cox, C. C. 219—Alderson.

On Interrogations by the Police. -The practice of questioning prisoners by policemen, and thus extracting confessions from them, though it does not render the evidence so obtained inadmissible, is one which is strongly reprehensible, and which ought not to be permit-Reg. v. Mick, 3 F. & F. 822 –Mellor.

An answer by a prisoner after his arrest, to a question asked by a policeman, is inadmissible. Reg. v. Bodkin, 9 Cox, C. C. 403.

A policeman ought not, in general, to question prisoners who are in his custody; but if he does, the interrogation ought not to be confined to questions calculated to compromise the party. Reg. v. Stokes,

17 Jur. 192—Alderson.

J., suspected of having committed felony, was followed and stopped by a constable in plain clothes. constable having told J. what he was, and that she (J.) was charged with felony, proceeded to put several questions to her relative to a parcel in her hand, which contained the goods supposed to have been stolen. At the time he asked the questions the constable had not told J. that she was under arrest, but he would not let her go. He did not

ducement to J., nor did he, before she answered him, give her any cau-J. having answered the questions, the constable then told her she was not bound to say anything that would criminate herself, and said he should bring her to the police office: -Held, that the conversation between J. and the constable was receivable in evidence., Reg. v. Johnston, 15 Ir. C. L. R. 60—C. C. R.

A policeman asked the prisoner, a boy between eight and nine years old, various questions as to his going to school, knowing the Lord's Prayer, where he would go to if he told a lie, whether God knew everything; and then asked, whether he thought God knew who set fire to the hav-stack. The boy not answering, and beginning to cry, the policeman asked him if he could give any information about the fire, and receiving no answer, he said he should apprehend him upon charge of setting fire to the hay-stack. The boy then made a statement:—Held, that it was not admissible. Reg. v. Day, 2 Cox, C. C. 209—Cresswell and Williams.

Admissions by a prisoner, elicited by questions of a police officer, with an admonition to tell all she knew, are inadmissible. But a subsequent statement by the prisoner to another officer is not necessarily so far under the same influence as to exclude it. Reg. v. Cheverton, 2 F. & F. 833—

A. was indicted for stealing a shilling which had been previously marked and put into a till. A constable found the shilling in his possession, and asked him if he had any more money about him. prisoner produced some half-crowns, and then made a statement:—Held, that this statement was not receivable, on the ground that it related to another and distinct felony. Reg. v. Butler, 2 C. & K. 221-Platt.

Previous Warning by Police.]expressly hold out any threat or in- | Though there may be cases in which it will be proper, yet, as a general rule, it is better that a policeman should not question a prisoner in his custody, without cautioning him that his answers will be evidence against him. Reg. v. Kerr, 8 C. & P. 177-Park.

Where a police constable, who apprehended the prisoner, having told him the nature of the charge, said "he need not say anything to criminate himself; what he did say would be taken down and used as evidence against him"; and the prisoner thereupon made a confes-Reg. v.sion:—Held, receivable. Baldry, 2 Den. C. C. 430; 16 Jur. 599; 21 L. J., M. C. 130; 19 L. T. 146.

A constable ought not to caution a prisoner not to say anything. constable is not to lead a prisoner to to say anything; but if a prisoner chooses to say something, it is the duty of the constable to hear what it is he has to say. Reg. v. Priest, 2 Cox, C. C. 378—Patteson.

A statement made by one of two prisoners to the other after an inducement suggested by that other in the presence of the constable in whose custody they are, and uncontradicted by the constable, is inadmissible. Reg v. Millen, 3 Cox, C. C. 507.

In Private Conversations. —What a prisoner is overheard to say to his wife, or even what he is overheard to say to himself, is receivable against him on a charge of felony; it is, however, a species of evidence to be acted on with caution, as it is very liable to be unintentionally misrepresented by the witnesses. Rex v. Simons, 6 C. & P. 540—Alderson.

A conversation between the prisoner and his mother, in which she made a statement to his prejudice, which he denied, is not admissible against him. Reg. v. Welsh, 3 F. & F. 275—Martin.

persons in relation to the charge under investigation made in the presence of the prosecutrix, but in the absence of the prisoner, was admitted. Reg. v. Arnall, 8 Cox, C. C. 439-Maule.

If a witness gives evidence of a conversation with a prisoner, in which that prisoner says something implicating another prisoner, the witness, in giving his evidence, must not omit the name of such other prisoner, and say "another person," but must give the conversation exactly as it occurred, and the judge will tell the jury that is not evidence against such other prisoner. Rex v. Hearne, 4 C. & P. 215-Littledale; S. P., Reg. v. Walkly, 6 C. & P. 175—Gurney.

By Wife, in presence and hearing of Prisoner. - What the wife of a person charged with felony says in his presence and hearing is admissible on the trial. Rex v. Bartlett, 7 C. & P. 832—Bolland.

On Examination before Magistrates. —An examination of a prisoner charged with a felony taken without threat or promise, by questions put by the magistrate, is notwithstanding admissible. Rex v. Ellis, R. & M. 432—Littledale; S. P., Rex v. Bartlett, 7 C. & P. 832— Bolland.

Where A. and B. were charged with the joint commission of a felony, and A., on his examination before a magistrate, stated, in the hearing of B., that he and B. jointly committed such felony, which B. did not deny:—Held, that these circumstances were not admissible as evidence against B. Rex v. Appleby, 3 Stark. 33—Holroyd.

Previous Caution or Warning by Magistrates. —The 11 & 12 Vict. c. 42, s. 18, which requires a caution to be given by the magistrate to the prisoner applies only to the conclud-But a conversation between two ing proceedings of the examination; and, therefore, a voluntary statement made by a prisoner in the course of an examination before a magistrate, and before all the witnesses have been examined, is admissible at the trial, although no caution has been given by the magistrate. Reg. v. Stripps, Dears. C. C. 648; 2 Jur., N. S. 452; 23 L. J., M. C. 109.

When a prisoner is willing to make a statement, it is the duty of magistrates to receive it; but magistrates, before they do so, ought entirely to get rid of any impression that may have before been on the prisoner's mind, that the statement may be used for his own benefit; and the prisoner ought also to be told, that what he thinks fit to say will be taken down, and may be used against him on the trial. Reg. v. Arnold, 8 C. & P. 621—Denman.

The committing magistrate told a prisoner that he would do all that he could for him if he would make a disclosure; after this, the prisoner made a statement to the turnkey of the prison, who held out no inducement to the prisoner to confess:—Held, that what the prisoner said to the turnkey could not be received, more especially as the turnkey had not given the prisoner any caution. Rex v. Cooper, 5 C. & P. 535—Parke.

A prisoner ought to be told by the magistrate that if he makes any statement it may be used as evidence against him, and that he must not expect any favour if he confesses; but the magistrate ought not to dissuade him from confessing. Rex v. Green, 5 C. & P. 312—Gurney.

A prisoner was before a magistrate on a charge of felony, and, after the examination of the witnesses against him, the magistrate said to him, "Be sure you say nothing but the truth, or it will be taken against you, and may be given in evidence against you at your trial":—Held, that this did not exclude the prison-

er's statement from being given in evidence. Reg. v. Holmes, 1 C. & K. 248—Rolfe.

On a prisoner being brought before a magistrate on a charge of forgery, the prosecutor said, in the hearing of the prisoner, that he considered the prisoner as a tool of G.; and the magistrate then told the prisoner to be sure to tell the truth; upon this the prisoner made a statement:—Held, that the statement was receivable. Rew v. Court, 7 C. & P. 486—Littledale.

Where a person, who made a confession to a constable in consequence of a promise held out, was taken before a magistrate, who, knowing what had taken place, cautioned the prisoner against making any confession before him, but the prisoner, notwithstanding, did make a confession to the magistrate:—Held, that this second confession was receivable on the trial of the prisoner, though it did not appear that the magistrate told the prisoner that his first confession would have no effect, and he therefore might have acted under an impression that, having once acknowledged his guilt, it was Rex v. Howes, too late to retract. 6 C. & P. 404—Denman.

Where Prisoner is Sworn.]—Several persons, one of whom was the prisoner, were summoned before the committing magistrate touching the poisoning of A. No person was then specifically charged with the offence. The prisoner was sworn, and made a statement:—Held, that this statement was not receivable, Rex v. Lewis, 6 C. & P. 161—Gurney.

When before the committing magistrate one of the prisoners was exexamined as a witness against the other:—Held, that what that prisoner said before the magistrate could not be given in evidence on the trial. Rex v. Davis, 6 C. &. P. 177—Gurney.

A statement relating to an of-

fence, made upon oath by a person not at the time under suspicion, is admissible against him, if he is afterwards charged with the commission of it. Rex v. Tubby, 5 C. & P. 530—Vaughan.

Mode of Taking.]—A prisoner before the committing magistrate made a statement, which by mistake was written in the information book, and headed "The information and complaint of R. B.":—Held, that it was not receivable, although the mistake could not have been explained by the magistrate's clerk. Rex v. Bentley, 6 C. & P. 148—Gurney.

After the examination of a prisoner before a magistrate on a charge of felony had been taken down and read over to him, and he was told that he might sign it or not, but he declined to do so:—Held, that it could not be read in evidence against him. Rex v. Telicote, 2

Stark. 483—Wood.

A prisoner, when before the committing magistrate, was sworn by mistake, he being supposed to be a witness; as soon as the mistake was discovered, the deposition which was begun was destroyed, and the prisoner cautioned. After this he made a statement:—Held, that such statement was receivable. Rew v. Webb, 4 C. & P. 564—Garrow.

Mode of Proving.]—Where, on the examination before the magistrate of persons charged with felony, the magistrate's clerk, in taking down the prisoner's statements, had left a blank where either of the prisoners had mentioned the name of another of the prisoners, the judge at the trial would not allow these blanks to be supplied by parol evidence. Reg. v. Morse, 8 C. & P. 605—Patteson.

If a prisoner, during the examination of witnesses against him before the magistrate, makes an observation, parol evidence may be given of such observations if the ma-

gistrate's clerk proves that he only took down the evidence of the witnesses and the statement of the prisoner, after the evidence against him was concluded. Rex v. Spilsbury, 7 C. & P. 187.

Where the examination of a prisoner by a coroner was inadmissible on account of an irregularity in the mode of taking it, the coroner was allowed to give parol evidence of what the prisoner said on the occasion of his examination. Rex v. Reed, M. & M. 403—Tindal.

Parol evidence may be given to add to the written examination of a prisoner taken by a magistrate. Rex v. Harris, 1 M. C. C. 338.

On the trial of a prisoner who has made before a magistrate a voluntary confession of his guilt, previously to the conclusion of the evidence against him, which confession is taken down in writing, and signed by the prisoner, and attested by the magistrate's clerk, the proper course is for the clerk to give evidence of the prisoner's statements, refreshing his memory by the written paper. Rex v. Bell, 5 C. & P. 162—Tenterden and Gaselee.

A prisoner charged with felony made a statement before the committing magistrate, which was taken down in writing, but not signed by the prisoner:—Held, that the magistrate's clerk might give evidence of what the prisoner said, using that which was taken down to refresh his memory. Rex v. Pressly, 6 C. & P. 183—Patteson.

A prisoner charged with felony made a statement before the committing magistrate, which was taken down and signed by the prisoner, but there was nothing on the face of the paper to shew that at the time the prisoner made the statement he was under examination on a charge of felony:—Held, that this examination could not be used as such but that the clerk to the magistrate might state what the prisoner said, using the paper to refresh

his memory. Rex v. Tarrant, 6 C. | & P. 182—Patteson.

A magistrate may give evidence of what a prisoner said at examinations before him, although much of what he said was in answer to questions put by the magistrate, no threat or promise being used, and the prisoner had refused to sign the magistrate's notes of the examination, on the ground that they were an incorrect account of the transaction. Rex v. Jones, Car. C. L. 13—Bayley, Gaselee and Vaughan.

And the magistrate may refresh his memory from the notes. Ib.

Minutes taken by the solicitor for a prosecution, on the examination of a prisoner before a magistrate, and by his direction may be read in evidence at the trial, though not signed either by the prisoner or the magistrate. Rex v. Thomas, 2 Leach, C. C. 637; S. P., Rex v. Bradbury, 2 Leach, C. C. 639, n.

A prisoner being under examination before a magistrate on a charge of felony, a statement was made in his presence by the solicitor for the prosecution, which the witness called to prove it said he believed had been taken down in writing:—Held, that parol evidence of the statement was not admissible on the trial of such prisoner. Rex v. Hollingshead 4 C. & P. 242—Vaughan.

It is to be presumed that what is stated on oath before a magistrate is taken down in writing, and therefore parol evidence of such a statement is not receivable, unless it is first shewn that it was not so taken down. *Phillips v. Wimburn*, 4 C. & P. 273—Tindal.

If a prisoner's examination before a magistrate concludes "taken and sworn before me," and under that is the magistrate's signature, it is not receivable; and the judge will neither allow the magistrate's clerk to prove that, in fact, it was not sworn, nor will he receive parol evidence of what the prisoner said.

Rex v. Rivers, 7 C. & P. 177— Park.

A party, who was charged with a murder, made a statement before the coroner at the inquest, which was taken down. The paper purported that the statement was made on oath:—Held, that, on the trial of the party for murder, this statement was not receivable; and that parol evidence was not admissible to shew that no oath in fact had been administered to the prisoner. Reg. v. Wheeley, 8 C. & P. 250—Alderson.

The magistrate returned at the end of the depositions against a prisoner in a case of felony—" The prisoner being advised by his attorney, declines to say anything." It appeared at the trial, that the depositions had been taken and signed by the witnesses on the 14th of November; but that, on the 10th of November, minutes had been taken of the evidence, and the prisoner had made a statement, which was taken down in writing by the magistrate's clerk:—Held, that statement might be proved on the part of the prosecution by the clerk who took it down; as, whatever a prisoner has said is evidence, though the magistrate may have neglected his duty in not returning it with the depositions. Reg. v Wilkinson, 8 C. & P. 662—Littledale and Parke.

A magistrate returned with the depositions taken before him, that the prisoner said—"I decline to say anything":—Held, that a witness for the prosecution could not be allowed to give evidence of the terms of a confession, which he stated the prisoner made in the presence of the magistrate, and while under examination. Rex v. Walter, 7 C. & P. 267—Abinger.

It is not necessary to call either the magistrate or his clerk to prove the due taking in writing of a prisoner's confession. Rex v. Hopes, 7 C. & P. 136.

A prisoner's statement, on his examination before a magistrate, may be given in evidence (if neither the magistrate nor his clerk is in court), on proof by a witness who was at the examination of the handwriting of the magistrate to the depositions returned to the court, and also that it was taken down in writing, and read over to the prisoner. Rex v. Reading, 7 C. & P. 649—Parke: S. P., Rex v. Rees, 7 C. & P. 568; S. P., Rex v. Chappel, 1 M. & Rob. 395—Denman.

If a prisoner, when examined before a magistrate, says that the deposition of F. T. is true, the deposition of F. T. may be read at the trial as a part of the prisoner's statement, although F. T. has been examined at the trial as a witness for the prosecution. Rex v. John, 7 C. & P. 324—Patteson.

Where a magistrate has signed the examination of a prisoner under 7 Geo. 4, c. 64, in order to allow it to be read on the trial, it is sufficient to prove the handwriting of the magistrate, and to shew that the examination is that of the particular prisoner. Rex v. Foster, 7 C. & P. 148—Alderson.

A. gave a mortal blow to B., his master, who took out a warrant against A. for an assault. charge of assault was heard under this warrant before Mr. and another magistrate, who summarily convicted A. of the assault. What was said by A. and B. before the magistrates was not taken down in writing. B. died:—Held, that on the trial of A. for the murder of B., Mr. D. might give evidence of what B. said in the presence of A. at the hearing before the magistrates of the charge of assault, and of what A. said in answer to it. Rex v. Edmunds, 6 C. & P. 164-Tindal.

Proof of Circumstances before Reception.]—A person charged with

the coroner. It appeared that, before he made this confession, B., who was both a clergyman and a magistrate, had had an interview with him:—Held, that the prosecutors were not bound to call B. before they put in the confession, but that it would be fair for them to do so; and that if the prosecutors did not call B., the prisoner might call him before the confession was read to prove that some inducement was Rex v. Clewes, 4 C. & held out. P. 221—Littledale.

A prisoner was in the custody of A., a constable; B., another constable, coming into the room, A. left it, and the prisoner immediately made a confession to B.:—Held, that, if the prisoner was in custody as an accused party, A. must be called to prove that he had held out no inducement to the prisoner to confess, before the confession made to B. is receivable; but if it appears that the prisoner was not then in custody on any charge, but merely detained as an unwilling witness, it will not be necessary to call A. Rex v. Swatkins, 4 C. & P. 548-Patteson.

If a prisoner makes a confession to a constable, who takes down what he says, and the prisoner signs it, this paper will be read by the officer of the court.

In order to render a confession by a prisoner admissible, the prosecution must shew affirmatively, to the satisfaction of the judge, that it has not been made under the influence of an improper inducement; if this appears doubtful on the evidence the confession ought to be rejected. Reg. v. Warringham, 2 Den. C. C. 447, n.; 15 Jur. 318—Parke.

At the trial of a servant for attempting to poison her mistress, a medical man having denied that he had held out any inducement to the prisoner to confess, gave evidence of a confession, without which the prisoner could not have been convicted. murder made a confession before | Evidence was then given that before

she made her confession he had said to her, in the presence of her mis-tress, " It will be better for you to tell the truth." The medical man was recalled, but did not admit this, and the judge left the evidence, including the confession, to the jury, but reported, that if the evidence had been given in the first instance he should have excluded the confession:—Held, that the confession ought to have been struck out, and that the conviction was wrong. Reg. v. Garner, 3 New Sess. Cas. 329; 1 Den. C. C. 329; T. & M. 7; 2 C. & K. 920; 12 Jur. 944; 14 L. J., M. C. 1; 3 Cox, C. C. 175.

Admissibility for and against Prisoner.]—If the declaration of the prisoner, in which she asserts her innocence, is given in evidence on the part of the prosecution, and there is evidence of other statements confessing guilt, the judge will leave the whole of the conflicting statements to the jury for their consideration; but if there is in the whole case no evidence but what is compatible with the assertion of innocence so given in evidence for the prosecution, the judge will direct Rex v. Jones, 2 C. & an acquittal. P. 629—Bosanquet.

If a prosecutor proves in evidence a declaration made by a prisoner, it becomes evidence for the prisoner as well as against him, but like all other evidence, the jury may give credit to one part of it and not to another. Reav. Higgins, 3 C. & P. 603—Parke.

If a prosecutor gives in evidence a declaration made by a prisoner exculpatory of himself, the jury is not bound to take this to be true merely because the prosecutor gives it in evidence; but they ought to consider how far it is consistent with the rest of the evidence, and whether they believe it to be really true. Rex v. Steptoe, 4 C. & P. 397—

Park and Garrow.

In an indictment for highway robbery, accompanied by violence, witnesses were called for the prisoner, to shew that he had received certain marks of blood on his coat before the robbery:—Held, that it was competent to the prosecution to put in the prisoner's statement before the magistrate, wherein he gave a different account of the same matter. Reg. v. White, 2 Cox, C. C. 192.

An incidental observation made by a prisoner in the course of his examination before a magistrate, which is not taken down as part of the prisoner's statement, is not admissible in evidence against him at the trial if it relates to any matter which formed part of the judicial inquiry then being conducted before the magistrate. Reg. v. Carpenter, 2 Cox, C. C. 228—Wilde.

Prisoner's Statement.]—A prisoner, indicted for stealing two heifers, said, "I drove away two heifers from 'the World's End Dolver'" (i. e. Fen). The prosecutor's farm was called by that name, but he could not swear that there was not any other of the same name in the neighbourhood:—Held, insufficient to warrant a conviction. Rex v. Tuffs, 5 C. & P. 167—Lyndhurst.

On a trial for felony, a prisoner, if defended by counsel, ought not to be allowed to make a statement to the jury in his defence. Reg. v. Manzano, 2 F. & F. 64; 6 Jur., N. S. 406—Martin.

A prisoner will be allowed to make his own statement to the jury, but his counsel cannot be permitted afterwards to address the jury for him. Reg. v. Taylor, 1 F. & F. 535—Byles.

A statement made by a prisoner before suspicion attaches to him, and before search made, in order to account for his possession of property, which he is afterwards charged with having stolen, is admissible as evidence for him. Reg. v. Abraham, 3 Cox, C. C. 430; 2 C. & K. 550—Alderson.

Written notes made by the coroner of a statement made in his presence during an inquest by the prisoner may be used by him at the trial, in order to refresh his memory as to what that statement was. Reg. v. Wiggins, 10 Cox, C. C. 562—Eush.

The reading of such notes does not entitle the prisoner to have the depositions of other witnesses taken in the course of the same inquest read. *Ib*.

The court refused, on the application of the prisoner's counsel, to call a witness who had been examined before the coroner, but had not been called by the prosecution. *Ib*.

## Depositions.

By 30 & 31 Vict. c. 35, s. 6, "de"positions of persons dangerously
"ill or unable to travel, may be
"taken, and their testimony per"petuated and given in evidence,
"in event of death; and by s. 7,
"an accused party may be present
"at the examination."

# (a) Mode of Taking.

(11 & 12 Vict. c. 42, ss. 17, 18, 19.)

Before Magistrates. —On a charge of felony, the witnesses who make the depositions on which the prisoner is committed should be examined in the prisoner's presence, and he should hear all the questions put and answered; and if the magistrate's clerk, before the arrival of the magistrates and of the prisoner, examines the witnesses and takes down what they state, and when the magistrates and prisoner arrive the depositions so taken are read over to the witnesses in the presence of the magistrates and the prisoner, and the latter is asked whether he has any question to put to any of them, this is wrong. Reg. v. Johnson, 2 C. & K. 394—Platt.

Where witnesses were sworn and examined before a magistrate, in the presence of the prisoner, and minutes of the evidence were written down by the clerk to the magistrates, and afterwards the depositions were written out from the minutes and the statements of the witnesses, by a clerk in the magistrates' clerk's office, after which the depositions so written out were read over, and signed in the presence of the magistrate and the prisoner:—Held, that an answer given by a witness to the clerk in the magistrates' clerk's office, in the course of writing out the depositions, was properly receivable in evidence, without the production of the depositions. Reg. v. Christopher, 4 New Sess. Cas. 139; 2 C. & K. 994; 1 Den. C. C. 536; T. & M. 225; 14 Jur. 203 ; 19 L. J., M. C. 103.

If the confession of a prisoner taken before a magistrate is by him transmitted to the judge, and it has on the face of it a statement that the first caution required by the 11 & 12 Vict. c. 42, s. 18, has been given, it is receivable in evidence; but semble, that if it appeared that an inducement to confess had been previously held out to the prisoner, would be necessary to shew that the second caution prescribed by that statute had been given. The prudent course is for the magistrate to give both the cautions, as some inducement to confess may have been held out to the prisoner of which the magistrate is not aware. Reg. v. Sansome, 3 C. & K. 332 : 1 Den. C. C. 545; 4 New Sess. Cas. 152; T. & M. 260; 4 Cox, C. C. 203; 14 Jur. 466; 19 L. J., M. C. 143.

It would be always desirable when a person of weak intellect is examined before a magistrate in a felony, that the magistrate's clerk should take down in the depositions the questions put by the magistrate, and the answers given by the witness as to the witness's capacity to

take an oath. Reg. v. Painter, 2 | by his own signature to his own de-C. & K. 319; 2 Cox, C. C. 244— Wilde.

In a case of felony the committing magistrate is not bound to bind over all the witnesses who have been examined before him in support of the charge, but only those whose evidence is material to the charge; but it is very desirable that all that has been given in evidence before the magistrate should be transmitted to the judge. Reg. v. Smith, 2 C. & K. 207—Denman.

Everything that occurs before a magistrate on the examination of a person on a charge of felony, should be taken down in the depositions, if it is material. Reg. v. Weller,

2 C. & K. 223-Platt.

Where, during the examination of a witness before a magistrate in support of a charge of felony, the prisoner interposes an observation which is material, such observation should be taken down in the depositions; and if it is not, the judge at the trial will not allow any evidence of it to be given. Ib.

Where a prisoner sent for a magistrate to make a statement to him, and the magistrate took down the conversation which passed between him and the prisoner, and wrote it immediately under the usual heading of a prisoner's statement, and read this over to the prisoner before the prisoner signed his statement which followed it, the judge directed this memorandum of the conversation to be read before he decided on the admissibility of the statement, instead of the magistrate stating orally what passed between Reg. v. Dinghim and the prisoner. ley, 1 C. & K. 637-Pollock.

The prosecutor proved that when the prisoner was before the magistrate, she was duly cautioned, and that she made a statement, which was taken down and read over to her, and to which she made her mark, the magistrate also signing it. The prosecutor identified the paper cross-examined on behalf of the

position, being on the same sheet of paper:—Held, that the prisoner's statement might be given in evidence without examining either the Reg. v. magistrate or his clerk. Hearn, Car. & M. 109—Coltman.

The depositions of a deceased witness, though not taken wholly in the prisoner's presence, are admissible, if the party was re-sworn, and the depositions read and signed in his presence. Rex v. Smith, 2 Stark. 208; Holt, 614; R. & R. C. C. 339; see Reg. v. Walsh, 5 Cox, C. C. 115.

If a prisoner is brought before a magistrate, his statement ought not to be taken till the evidence against him is gone through, and he should then be asked if he has anything to say in answer to the charge. Rex v. Fagg, 4 C. & P. 566—Garrow.

A deposition taken by virtue of 11 & 12 Vict. c. 42, s. 17, may be read in evidence against a prisoner, although taken before two magistrates who acted only upon that occasion, and the prisoner was afterwards committed for trial by another magistrate. Reg. v. De Vi-dil, 9 Cox, C. C. 4—Blackburn.

In order to render depositions taken before a magistrate admissible in evidence upon the trial of a prisoner, they must be taken in his presence and in that of the magistrate, and the prisoner must have an opportunity of cross-examining the witnesses in the presence of the magistrate. Reg. v. Watts, L. & C. 339; 12 W.R. 112; 9 L.T., N. S. 453; 33 L. J., M. C. 63; 9 Cox, C. C. 395.

A deposition of a deceased witness, partly taken from the examination of the witness in the presence of the party accused on a previous day, and not then read over, but read over on a subsequent examination of the witness in the presence of the party accused, the witness then being further examined, and party accused, and the notes of the magistrates' clerk of the whole being subsequently fairly copied in an adjoining room, and then read over to the witness in the presence of the party accused, and signed by the witness and the magistrate, is admissible. Reg. v. Rates, 2 F. & F. 317—Hill.

Deposition of a witness taken before magistrates allowed to be read at the trial as evidence against him, although after his evidence was taken the magistrates committed him for trial, his evidence criminating himself. Reg. v. Chidley, 8 Cox, C. C. 365—Cockburn.

Upon a trial for manslaughter the prisoner's deposition on oath, taken by the coroner upon the inquest, is admissible against him. Reg. v. Bateman, 4 F. & F. 1064—

Martin.

But a deposition not taken in his presence will be rejected. Reg. v. Rigg, 4 F. & F. 1085—Smith.

Q. was charged on an indictment with the wilful murder of his wife. The injuries which resulted in her death were inflicted by the prisoner on the 18th December, 1867; she died on the 23d December; but the prisoner was not taken into custody till the 3rd January, 1868. On the 22nd December, 1867 (the day before she died), she being then in the hospital, and having been told by the medical attendant that thought there were little hopes of her living, and that he thought she was going to die," and she herself saying, "I know I shall never get better; what will become of my poor children?" made a statement which was taken down in writing in the presence of the magistrate. the trial, it was proposed on behalf of the prosecution to give this statement in evidence under 30 & 31 Vict. c. 35, s. 6:—Held, that the statement could not be read in evidence without proof of notice having been given to the accused bestatute could have no operation in the case of a deposition taken while the accused person was keeping out of the way, as the notice was required to be given to the accused before the taking of the statement, and not simply before the reading of it. Reg. v. Quigley, 18 L. T., N. S. 211—Mellor and Lush.

Of Witnesses for Prisoner.]—Where a prisoner charged with felony has witnesses in attendance at the time of the examination before the magistrate, Lord Denman, C. J., recommended that they should be then examined, if the prisoner wishes it, and if their evidence is believed, and answers the charge, no further proceedings need be taken. Anon., 2 C. & K. 845.

But if these witnesses contradict those for the prosecution in material points, the case should be sent to a jury, and the depositions of the prisoner's witnesses should be taken, and signed by them, and transmitted to the judge, together with the depositions in support of the charge. It

Before Coroners.]—A deposition taken before a coroner on an inquest is admissible where the witness is so ill as to be unable to attend at the trial, in the same manner as a deposition taken before a magistrate. Reg. v. Hazell, 8 Cox, C. C. 443—Wightman.

Depositions taken before the coroner on an inquisition of murder, cannot be read in evidence on the trial of the indictment, though the deponents are dead, if they are not signed by the coroner, or if signed, and his handwriting cannot be proved. Rex v. England, 2 Leach, C.

ment in evidence under 30 & 31 Vict. c. 35, s. 6:—Held, that the statement could not be read in evidence without proof of notice having been given to the accused before it was taken; and that the on the body of the deceased, is not receivable in evidence. Reg. v. Owen, 9 C. & P. 238—Gurney.

C. 770.

The deposition of a prisoner at a coroner's inquest, after a caution from the coroner, may be read. Reg. v. Colmer, 9 Cox, C. C. 506— Martin.

Before Consuls. ]—Semble, that depositions taken by a consul abroad under 7 & 8 Vict. c. 112, ss. 58, 59, and returned to this country, and certified under the consular seal to have been duly taken, are admissible under the Mercantile Marine Act, 1850 (13 & 14 Viet. c. 93, s. 115), without further proof, although it appears from extrinsic evidence that the witnesses gave their evidence in a foreign language, which was translated into English to the prisoner, and inserted in the depositions by the consul. Reg. v. Russell, 6 Cox, C. C. 60.

Taken Abroad—Absence of Witness.]—A witness, whose evidence had been taken abroad by the British consul, under 17 & 18 Vict. c. 104, s. 270, was the captain of a British sailing vessel, which was stated, after examination of the official records by an officer of the Board of Trade, never to have been in this country. When some of the witnesses left the captain, he was in charge of the vessel at Bordeaux, but it was not known where she was then bound for, or whether she had since sailed:—Held, that it was sufficiently proved that the witness was not in the United Kingdom, and his deposition was accordingly Reg. v. Anderson, 11 admitted. Cox, C. C. 154—Byles: S. P., Reg. v. Conming, 11 Cox, C. C. 134—  $\mathbf{W}$ illes.

Signing.] — A magistrate must sign a deposition of a witness at the foot of such deposition. Reg. v. Richards, 4 F. & F. 860 — Cockburn.

To the deposition of a marksman, the magistrates' clerk attached the her throat, and being likely to die, prisoner's name, so that it appeared a magistrate was sent for, and in

to have been signed by the prisoner's mark:—Held, that the deposition was properly received in evidence against him. Reg. v. Mullen, 9 Cox, C. C. 339.

Caption. —The title or caption of the written deposition of a witness, taken before a committing magistrate, need state no more than that it is the deposition of the witness, and that the examination had reference to the particular charge upon which the prisoner is being Reg. v. Langridge or Langtried. bridge, T. & M. 146; 1 Den. C. C. 448; 3 New Sess. Cas. 645; 2 C. & K. 975; 13 Jur. 545; 18 L. J., M. C. 198; 3 Cox, C. C. 465.

In order to make the deposition a deceased witness admissible against a prisoner charged with felony, such deposition need not have a separate caption. If there is a caption at the head of the body of depositions taken in the case, that is sufficient. Reg. v. Johnson, 2 C. & K. 355—Alderson.

In felony the depositions had one caption which mentioned the names of all the witnesses, and at the end had one jurat which also contained the names of all the witnesses, and to which was the signature of the magistrate, and each witness signed his own deposition:—Held, to be correct. Reg. v. Young, 3 C. & K. 106—Williams.

An examination of a man touching injuries which he has received from the prisoner, if, subsequently on the death of the injured man from the injuries he has received, appended to a caption, charging the prisoner with his murder, is inadmissible on that charge, although it may be admissible as a dying declaration. Reg. v. Clarke, 2 F. & F. 2—Wightman.

A woman having had a rape committed upon her by two, the next day, in distress of mind, cut

Fish. Dig.—42. Digitized by Microsoft®

the presence of the prisoners, her deposition was properly taken. She was told she was likely to die, and she died a few days afterwards. Subsequently other witnesses gave evidence against the prisoners before a different magistrate, and to these latter depositions the deposition of the deceased was attached, without any separate caption:—Held, that the deposition of the deceased, having no caption shewing on what charge it was taken, was inadmissible; nor was it admissible as a dying declaration, as it did not relate to the offence which caused the death. Reg. v. Newton, 1 F. & F. 641—Hill and Watson.

General Admissibility.]—A statement made by a prisoner before a committing magistrate, and signed by the prisoner and the magistrate, if taken in the form prescribed in the schedule to 11 & 12 Vict. c. 42, is admissible in evidence against him at his trial at common law. Reg. v. Sansome, 1 Den. C. C. 545; 4 New Sess. Cas. 152; T. & M. 260; 2 C. & K. 332; 14 Jur. 466; 19 L. J., M. C. 143; 4 Cox, C. C. 203.

It will be prudent for justices always to give the prisoner the second caution as well as the first. *Ib.* 

After taking the examination of the witnesses on a charge of felony against the prisoner, the magistrate cantioned the prisoner in the language prescribed by 11 & 12 Vict. c. 42, s. 18, but did not, as the proviso to that section requires, tell the prisoner he had nothing to hope from any promise of favour, or to fear from any threat. The prisoner then made a statement, which was taken down, but was not signed by him or the magistrate. The prisoner, after a remand, being brought again before the magistrate, some questions were put to the witnesses by the prisoner's attorney, who then objected to the statement being treated as the prisoner's statement,

evidence, and the prisoner being then asked if he wished to make any statement, declined doing so:—Held, that the prisoner's statement was admissible as evidence against him at his trial. Reg. v. Bond, 4 New Sess. Cas. 143; T. & M. 242; 1 Den. C. C. 517; 3 C. & K. 337; 14 Jur. 399; 19 L. J., M. C. 138; 4 Cox, C. C. 231.

A statement made by a prisoner before a magistrate, not signed either by the magistrate or the prisoner, is not excluded as evidence because the magistrate omits to inform him that he has nothing to hope or to fear from either promise

or threat. Ib.

Semble, that before a statement made by a prisoner in the presence of, and duly signed by the committing magistrate, can be received in evidence against him, proof must be given that he was cautioned in the manner provided by 11 & 12 Vict. c. 42, s. 18, dehors any declaration to that effect contained in the caption of the statement itself. Reg. v. Higson, 2 C. & K. 769—Alderson.

Material evidence may be given against a prisoner on his trial, in addition to what appears from the depositions to have been given against him before the magistrates. Reg. v. Ward, 2 C. & K. 759 — Cress-

well.

If two are taken before a magistrate on a charge of felony, what the first says in his statement before the magistrate cannot be given in evidence against the second, because when before the magistrate the second is only called upon to answer the statement in the depositions on oath, and not what any other prisoner may have said on his examination. Reg. v. Swinnerton, Car. & M. 593—Patteson.

by the prisoner's attorney, who then objected to the statement being treated as the prisoner's statement, as an addition had been made to the

for feloniously wounding, although on both charges the transaction is the same, and the witness is too ill to attend the trial for the felony. Reg. v. Ledbetter, 3 C. & K. 108—Campbell and Williams.

Such a deposition is only receivable in evidence where the indictment is for the same identical offence as that charged before the the justice, and upon which such de-

position was taken. Ib.

A. was charged before a magistrate with wounding B., with intent to do him grievous bodily harm, and B.'s deposition was taken. B. afterwards died of the wound, and A. was indicted for his murder:—Held, that on the trial for murder the deposition might be read in evidence; as, though it was not on the same technical charge, it was taken in the same case, and A. had full opportunity for cross-examination. Reg. v. Beeston, Dears. C. C. 405; 24 L. J., M. C. 5; 18 Jur. 1058; 3 C. L. R. 82.

On an examination on a charge of felony before a magistrate, the prisoner was asked if he wished to put any question to a witness against Instead of asking anything he made a statement, which was written down on the depositions, but not signed by the prisoner, who had received no caution:-Held, that this statement was not evidence per se, but that any one who heard the prisoner make it might give evidence of it, refreshing his memory from what was thus written down, but in such a case a prisoner ought to be told that that was not the proper time for him to make a statement. Reg. v. Watson, 3 C. & K. 111—Patteson.

If upon the trial of a prisoner a witness gives evidence of facts of which no mention is made in his deposition as taken before the committing magistrate, the clerk to the magistrate may be called for the purpose of stating that such facts

were stated by the witness when he made his deposition, but were not taken down by him, the clerk. Reg. v. Moore, 20 L. T., N. S. 987—Lush.

#### (b) Returning.

(11 & 12 Vict. c. 42, s. 20. Former provisions, 7 Geo. 4, c. 64, ss. 3, 4; and 6 & 7 Will. 4, c. 114, s. 3. By sect. 4 of the latter act, "all per"sons under trial shall be entitled, "at the time of their trial, to in spect, without fee or reward, all "depositions (or copies thereof)" which have been taken against "them, and returned into the court before which such trial shall be "had.")

It is the duty of a magistrate to return to the judge, not only the depositions of witnesses, but also any confession taken down as made by the prisoner; and it is no excuse for not doing so, that the confession was wanted to be sent before the grand jury. Rex v Fallows, 5 C. & P. 508; S. P., Rex v. Fuller, 7

C. & P. 269.

The rule, that the written deposition taken under 7 Geo. 4, c. 64, s. 3, was the evidence of what had been stated by a witness before a magistrate on a charge of misdemeanor was not limited to the individual case, with the view to which the evidence was taken down, but extended to all subsequent proceedings, civil as well as criminal. Leach v. Simpson, 5 M. & W. 309; 7 D. P. C. 513; 3 Jur. 654.

The reading, on the part of the prosecution, of the prisoner's statement, returned by the magistrate at the end of the depositions, does not give the prisoner the right to consider the depositions as in evidence on the part of the prosecution, though it appears that they were all taken before the statement was made; but if the prisoner wishes to have the whole or any particular part of the depositions

read, he must read it as his evidence. Reav. Pearson, 7 C. & P. 671—Patteson and Williams.

A magistrate is not bound by law to return all that is stated by the witnesses on a charge of felony, but only all that is material to the case; and though, since the act allowing a prisoner a copy of the depositions, they ought to contain what was stated, that he may know what he has to answer, there is a difference between a witness at the trial adding to his deposition, and his contradicting it. Rex v. Coveney, 7 C. & P. 667—Alderson; S. P., Rex v. Thomas, 7 C. & P. 817—Parke.

The magistrate ought to return all that was said by the witnesses with respect to the charge, as the object of the legislature was to enable prisoners to know what they have to answer on their trial. Reav. Grady, 7 C. & P. 650—Denman.

It was proved by the magistrate's clerk, that the deposition of a prosecutor was taken before the magistrate, in the presence of the prisoner, who had a full opportunity of cross-examining. The deposition was taken on the same sheet of paper with those of the other witnesses, and at the end of that last deposition were the words, "sworn before me," and the mag-istrate's signature. The prosecutor had died before the trial:-Held, that, on the above facts being proved, the deposition was receivable on the trial, although the magistrate had not put his signature to this particular deposition. Req. v.Osborne, 8 C. & P. 113—Coleridge.

A., who was a witness for the prosecution against B. on a charge of arson, had first been examined by the magistrate before any specific charge was made against any person, and his deposition taken in writing. A. was next accused of the offence, and his statement as a prisoner was also taken down by

the magistrate. After this, B. was charged with the offence, and A. examined as a witness, when A.'s statement made at that time was taken down, B. being then committed for trial:—Held, that all these statements of A. ought to be returned to the judge, and not merely the statement made when B. was committed. Rew v. Simons, 6 C. & P. 540—Alderson.

Nothing should be returned as a deposition unless the prisoner had an opportunity of knowing what was said, and an opportunity of cross-examining the person making the deposition. Reg. v. Arnold, 8

C. & P. 621—Denman.

The depositions taken before the magistrate against a prisoner cannot be read against him, where the witness has died since the examination, unless the depositions in crossexamination have been correctly taken and returned to the court. Depositions taken in cross-examination, at a subsequent time to those in chief, and not signed by the committing magistrates, are so irregular as to prevent the whole depositions from being read against the prisoner; and this, although both are proved by one of the committing magistrates to have been accurately taken. Reg. v. France, 2 M. & Rob. 207—Alderson.

In a case affecting the life of a party, it is very desirable that a magistrate who took the depositions against the prisoner with his own hand should be called as a witness, before the depositions are read, to prove the correctness of what he took down; but it is not absolutely necessary, in point of law, that he should be called, and the depositions may be read on proof of his handwriting. Reg. v. Pikesley, 9 C. & P. 124—Parke and Bosanquet.

person, and his deposition taken in writing. A. was next accused of the depositions, that a prisoner was the offence, and his statement as a sworn and made a statement, the prisoner was also taken down by

evidence against him, although a witness states that he was not in fact sworn. Ib.

Where anything is found in consequence of a statement made by a prisoner, under circumstances which preclude its being given generally in evidence, such part of it as relates to the thing found in consequence is receivable, and ought to be proved. *Reg.* v. *Gould*, 9 C. & P. 364—Tindal and Parke.

It is not necessary to be clearly shewn that statements, made by a prisoner on his examination before a magistrate, were reduced to writing, in order to exclude parol evidence of such statements. Reg. v. McGovern, 5 Cox, C. C. 506.

# (c) Illness, Death, Insanity, or Absence of Witness.

## (11 & 12 Vict. c. 42, s. 17.)

Where a witness is ill, and is attended by a surgeon, the judge at the trial will not receive the witness's depositions in evidence unless the surgeon attends at the trial to prove that the witness is unable to travel; but where a witness is permanently disabled, and is not attended by a surgeon, other evidence that the witness is unable to travel may be sufficient; but where the witness is attended by a surgeon, and a person proves at the trial that he on the 18th March saw the witness in bed, and that he appeared ill, the commission day being the 21st, and the trial the 23rd, this is not sufficient proof of the illness of the witness to render his deposition admissible. Reg. v. Riley, 3 C. & K. 116—Patteson.

Depositions of a witness so ill as to be unable to travel are admissible in evidence before the grand jury as well as before the petty jury. Reg. v. Clements, 2 Den. C. C. 251; T. & M. 579; 15 Jur. 407; 20 L. J., M. C. 193; 5 Cox, C. C. 191.

On the trial of a felony, where to have procured the absence. Ib.

the prosecutor is bed ridden, and not likely to be able to attend the assizes, his deposition, taken by the committing magistrate in the presence of the prisoner, may be given in evidence; and the deposition may be proved by a person who was present, without calling the magistrate or his clerk. Reg. v. Wilshaw, Car. & M. 145—Coltman.

If a witness is actually insane at the time of the trial of an indictment for a misdemeanor, his deposition taken before the committing magistrate is receivable the same as if the witness was dead, although the insanity of the witness may be only temporary; but if it appears that the witness is not insane, but that the witness has been suffering from delirium and depression of spirits in consequence of a blow on the head, and that his intellects are affected by the injuries he has received, and it is the opinion of his physicians that he will recover, then the deposition is Reg. v. Marshall, not receivable. Car. & M. 147—Coltman.

If the deposition of a witness on charge of an indictable offence has been regularly taken before a magistrate, and at the time of the trial such witness is dead or so ill as not to be able to travel, the deposition may be read as evidence against the prisoner. So also, if it is proved that the witness is kept away by the prisoner's procurement. Reg. v. Scaife, 17 Q. B. 238; 5 Cox, C. C. 243; 2 Den. C. C. 281; 15 Jur. 607; 20 L. J., M. C. 229.

But such deposition is not admissible on the ground merely that the prosecutor, after using every possible endeavour, cannot find the witness. *Ib*.

If procurement of the absence is shewn, and there are several prisoners, the deposition is evidence against those only who are proved to have procured the absence. *Ib*.

Before a deposition of a person | who is dead, or so ill as not to be able to travel, can be read, it must be proved affirmatively on the part of the prosecution that the deposition was taken in the presence of the accused person, and that he or his counsel or attorney had a full opportunity of cross-examining the witness. Reg. v. Day, 6 Cox, C. C. 55—Platt.

To give the accused a full opportunity within the meaning of the statute, the examination must be taken, question by question, in his presence, and in the presence of the magistrate, and it is not sufficient to read over the statement of the witness, previously taken and committed to writing, in the absence of the magistrate. Ib.

The accused must also be asked whether he has any question to put with reference to the statement of the individual witness.

To render the deposition of an absent person admissible, it is not necessary that he should be absolutely unable to travel; it is sufficient if his attendance would place his life in jeopardy. Ib.

The deposition of a witness absent from illness, to be admissible must be regular, and appear to have been regularly taken upon the face thereof, and cannot be proved by extraneous evidence to have been properly taken in fact. Reg. v. Miller, 4 Cox, C. C. 166— Maule.

A witness, who had been examined before the committing magistrate, came to the assize town where the trial of the accused was to take place, and into the building where the court was sitting, but before the trial came on returned to his home by the advice of a medical man, who deposed that in his judgment it would have been highly dangerous for the witness to remain. While the trial was going on, the witness was on his way home: - Held, that the 9 Cox, C. C. 296-Byles.

witness was unable to travel, within 11 & 12 Vict. c. 42, s. 17, and consequently that his deposition before the committing magistrate might be read in evidence. Reg.v. Wicker, 18 Jur. 252 — Parke and Channell.

A witness, who had been examined before the magistrate, came up five miles from the country and gave her evidence before the grand jury. She went back at night and returned in the morning for two days, during which she was waiting for the trial to come on. At the trial, on the third day, it was proved that she had been attacked that morning with a bowel complaint, and that when the policeman left her residence early on that day she was unable to travel:— Held, that her deposition was not admissible. Reg. v. Harris, 4 Cox, C. C. 440.

It is a question for the judge to determine whether the proof of a witness being so ill as not to be able to travel, within the 11 & 12 Vict. c. 42, s. 17, is sufficient for the purpose of admitting his deposition before the committing magistrate. Reg. v. Stephenson, L. & C. 165; 8 Jur., N. S. 522; 31 L. J., M. C. 147; 9 Cox, C. C. 156; 6 L. T., N. S. 334; S. P., Reg. v. Croucher, 3 F. & F. 285.

Therefore, when a deposition was admitted upon evidence that the prosecutrix was daily expecting her confinement and otherwise poorly, and therefore too ill to travel, the court declined to interfere with the exercise of the discretion of the judge.  $\mathcal{I}b$ .

Where a witness for the prosecution is so ill as not to be able to travel, the judge may, at his discretion, permit the deposition to be read, or postpone the trial. Reg. v. Tait, 2 F. & F. 553—Crompton.

In the absence of medical evidence, a deposition will not be allowed to be read. Reg. v. Welton,

A witness who had been examined before the magistrate, and whose deposition was returned, was, at the trial, said to be too ill to give evidence, though not too ill to be able to travel. The deposition was read, the court being of opinion that the words of the statute, "so ill as not to be able to travel," were applicable to a case where the witness is so ill as not to be able to travel for the purpose of giving evidence. Reg. v. Wilson, 8 Cox, C. C. 453 — Russell Gurney, Recorder.

A superintendent of police, having seen a policeman, a material witness, in bed two days before the trial, and stating that he appeared ill and so weak that he could not get out of bed:—Held, that this, without medical evidence as to the nature of the illness, was not sufficient to admit the policeman's depositions. Reg. v. Williams, 4 F.

& F. 515—Pigott.

If a witness has had an attack of paralysis, and is unable to hear or speak, or give evidence, and his physician does not permit him to go about, his depositions may be read, though it would not endanger his life to travel, or to be brought into court. Reg. v. Cockburn, Dears. & B. C. C. 203; 3 Jur., N. S. 447; 26 L. J., M. C. 136; 7 Cox, C. C. 265.

Delivery of a dead child is primâ facie evidence of illness, and the deposition of the party is admissi-Reg. v. Wilton, 1 F. & F. ble.

309—Willes.

But depositions of an absent witness are not admissible before the grand jury without medical evidence of his illness. Reg. v. Philins. 1 F. & F. 105—Erle.

Absent Abroad. — The fact that a witness, whose deposition has been taken before the committing magistrate, is at the time of the trial residing abroad, does not render such deposition admissible in evi- tions contain no note of such cross-

dence against the prisoner at the trial, under the 11 & 12 Vict. c. 42, s. 17. Reg. v. Austin, Dears. C. C. 612; 2 Jur., N. S. 95; 25 L. J., M. C. 48; 7 Cox, C. C. 55.

A witness, whose evidence had been taken abroad by the British consul, under 17 & 18 Vict. c. 104, s. 270, was the captain of a British sailing vessel, which was stated, after examination of the official records by an officer of the Board of Trade, never to have been in this country. When some of the witnesses left the captain, he was in charge of the vessel at Bordeaux. but it was not known where she was then bound for, or whether she had since sailed:—Held, that it was sufficiently proved that the witness was not in the United Kingdom, and his deposition was accordingly admitted. Reg. v. Anderson, 11 Cox, C. C. 154—Byles; S. P., Reg. v. Conming, 11 Cox, C. C. 134— Willes.

## (d) Examination on.

The practice of putting the depositions into the hands of a witness on cross-examination, telling him to read over the evidence which he had given before the magistrates, and then asking him whether he adhered to his present statement, without putting the depositions in evidence, or giving the jury an opportunity of knowing their contents, is inexpedient and contrary to principle. Reg. v. Ford, 2 Den. C. C. 245; 3 C. & K. 113; T. & M. 573; 15 Jur. 406; 20 L. J., M. C. 171.

The proper course is, to read the deposition to him at the time, and to cross-examine upon it, or to put it in afterwards as evidence for the

prisoner. Ib.

On the trial of a prisoner, his counsel may ask a witness for the prosecution whether he did not make a certain statement whilst under cross-examination before the magistrates, although the deposi-

Reg. v. Curtis, 2 C. examination. & K. 763—Erle.

A witness cannot be cross-examined as to his statements made before the committing magistrate until his depositions have been read over to him; such questions may, however, be put by the court personally, and by the prisoner's counsel, as the mouthpiece of the court, by its permission. Reg. v. Peel, 2 F. & F. 21—Willes.

A witness may be asked by prisoner's counsel as to what he said before the coroner, without putting in the depositions. Reg. v. Maloney, 9 Cox, C. C. 26—Byles.

A prosecution cannot use or refer to the depositions without putting Reg. v. Muller, 10 Cox, them in. C. C. 43—Pollock and Martin.

The deposition made by a witness was allowed to be put into his hands to refresh his memory, and he was then asked what he said about a fact which he had answered before in the negative, and answered the affirmatively. question

Quin, 3 F. & F. 818—Wightman. There is no distinction between depositions before a coroner and before a magistrate with reference to the modes of cross-examination upon them. A witness cannot therefore be asked on cross-examination as to what he said before the coroner. But the deposition may be put into the witness's hands, to read over to himself and refresh his memory. Reg. v. Barnet, 4 Cox, C. C. 269—Platt.

A witness cannot be asked on cross-examination whether, when he was examined before the magistrate, he recollected such and such a particular fact. Reg v. Newton, 4 Cox, C. C. 262—Patteson.

Where an accomplice who could not read had made a statement before the committing magistrate, and at the trial gave evidence falling very short of what he said before the magistrate, the judge allowed but would not allow the deposition to be read to him by the officer of the court, that the counsel for the prosecution might examine upon it. Reg. v. Beardmore, 8 C. & P. 260 -Gurnev.

Where, on cross-examination, a witness is asked, with permission of the judge, to look at his deposition before the committing magistrate, and say whether he still adheres to his present statement, and it appears the witness is unable to read, the deposition cannot be read to the witness for the same purpose without being put in as evidence. Reg. v. Matthews, 4 Cox, C. C. 93 —Erle.

If upon a trial a witness makes a statement which does not appear in his deposition, he may be asked, on cross-examination, without his deposition being put in, whether he ever made such a statement before. Reg. v. Moir, 4 Cox, C. C. 279.

In a case of felony, in order to prove that a witness did not state a particular fact before the magistrate, his deposition must be put in, and a witness cannot be questioned as to what he either did or did not state before the magistrate, without first allowing him to read or to have read to him, his deposition taken before the magistrate. Reg. v. Taylor, 8 C. & P. 726—Erskine.

Where a witness for the prosecution gives a different answer on examination in chief to that which was expected, his deposition may be put in his hands for the purpose of refreshing his memory, and the question then put to him. If the witness persists in giving the same answer after his memory has been so refreshed, the question may be repeated to him from the deposition in a leading form. Reg. v. Williams, 6 Cox, C. C. 343—Williams.

Upon the trial of an indictment for felony, a witness for the prosecution was asked by the prisoner's counsel whether he did not make a his deposition to be shewn to him, certain statement to the magistrate's clerk in answer to a question put by him in the absence of the magistrate and of the prisoner, whilst he (the clerk) was writing out the depositions from the minutes of the examination and cross-examination which had been previously taken before the magistrate, and put for the purpose of making the depositions more complete. The depositions, when written, were afterwards read over to the witnesses and in the presence of the magistrate and the prisoner, to whom opportunity of cross-examining them was again afforded, the witnesses swore that they were true and signed them:— Held, that even if the depositions so taken had, when re-sworn, the legal character of the depositions, the prisoner's counsel was entitled to ask the above question without putting them in, and the witness was bound to answer it. Reg. v. Christopher, 4 Cox, C. C. 76; 19 L. J., M. C. 103; 1 Den. C. C. 536.

In cross-examining a witness who has been examined before the magistrate, although it is admissible to ask him, referring to the depositions, whether he has not said so-and-so, his answer must be taken, unless the depositions are put in to contradict him, and it is not admissible to state that the depositions do contradict the witness without thus putting them in. Reg. v. Riley, 4 F. & F. 964—Channell.

# (e) Copies.

By 11 & 12 Vict. c. 42, s. 27, "at "any time after all the examina-"tions shall have been completed, "and before the first day of the as-"sizes or sessions, or other first sit-"ting of the court, at which any per-"son admitted to bail is to be tried, "such person may require, and shall be entitled to have of and from the officer or person having the custo-"dy of the same, copies of the de-"positions on which he shall have been committed or bailed, on pay-"t most of a reasonable sum for the

"same, not exceeding at the rate of "three halfpence for each folio of "90 words." (Substituted for provision contained in 6 & 7 Will. 4, c. 114, s. 3, repealed by s. 34 of 11 & 12 Vict. c. 42.)

Under 6 & 7 Will. 4, c. 114, s. 3, persons committed to prison for reexamination on charges of felony, were not entitled to demand copies of the deposition. Fletcher (Exparte), 1 New Sess. Cas. 40; 1 D. & L. 896; 8 Jur. 269; 13 L. J., M. C. 67; S. C. nom. Reg. v. London (Lord Mayor), D. & M. 486; 5 Q. B. 555.

The right to copies does not attach until the prisoner is held to bail, or committed to prison for trial. *Ib*.

It is the duty of the magistrate to complete and sign the depositions as soon as they are taken. *Ib*.

A party applying to the Queen's Bench for a rule, calling upon the justices to furnish copies of the depositions taken against him, must shew a right existing at the time of his application to the court, as well as at the time of the refusal by the justices to grant the copies. Reg. v. Herefordshire (Justices), 1 L. M. & P. 323; S. C. nom. Humphrys (Ex parte), 4 New Sess. Cas. 179; 15 Jur. 608; 17 L. J., M. C. 189; —B. C.—Coleridge.

The 11 & 12 Vict. c. 42, s. 27, applies only to the case of a person committed to prison or admitted to bail for the purpose of being tried.

Depositions taken before a coroner were within 6 & 7 Will. 4, c. 114, s. 3, which required copies of depositions to be furnished on application to prisoners at the rate of charge therein provided; and a coroner who demands more is guilty of extortion in his office. Reg. v. White, 5 Cox, C. C. 562.

"dy of the same, copies of the de"positions on which he shall have been committed or bailed, on pay"ment of a reasonable sum for the der 6 & 7 Will. 4, c. 114, s. 3, to a copy of his own statement returned by the magistrate, as made before

him, but only to a copy of the depositions of the witnesses against him. Reg. v. Aylett, 8 C. & P. 669—Lit-

tledale and Parke.

If it is shewn, that depositions were regularly returned by the magistrates to the proper officer, and it is proved by the latter that they cannot be found after diligent search, the prisoner's counsel may cross-examine from copies of them, those copies being proved to be correct by the magistrate's clerk. Reg. v. Shellard, 9 C. & P. 277—Patte-

A. was committed for having received stolen iron. B. was admitted as a witness for the crown against A. The counsel of A. applied to the judge for a sight of the depositions which had been returned against B., which was granted. Reg. v. Walford, 8 C. & P. 767—Patteson.

A coroner's jury, on the investigation of a case of homicide, returned a verdict of wilful murder against some person or persons un-The coroner returned the known. deposition he had taken to the Central Criminal Court:—Held, on application by the counsel for the prisoner indicted for the murder of the same person, for a copy of such depositions, that, although the coroner could not in such a case have been compelled to return them, under 7 Geo. 4, c. 64, s. 4, yet that having done so, the judges had power, by their general authority as a court of justice, to order a copy to be given if they thought it material to the interests of justice. Reg. v. Greenacre, 8 C. & P. 32-Littledale and Coleridge.

#### 3. Presumptions or Probabilities of Guilt.

In a criminal case, the jury, in order to convict, ought to be satisfied that by the evidence, affirmatively, as a conviction created in their minds beyond all reasonable doubt, that the guilt of the prisoner an impression of probability, they ought to acquit him. Reg. v. White, 4 F. & F. 383-Martin.

So far as the case rests on direct testimony, the jury should, if there are any circumstances to impeach the credibility of the witnesses, look carefully to those circumstances as elements of doubt in the case.

A mere scintilla of evidence not sufficient to justify a verdict ought not to be left to the jury. Reg. v.

Smith, L. & C. 607.

## 4. Accomplices.

It is not a rule of law, but of practice only, that a jury should not convict on the unsupported testimony of an accomplice. Reg. v. Stubbs, Dears. C. C. 555; 1 Jur., N. S. 1115; 25 L. J., M. C. 16.

Therefore, if a jury chose to act on such evidence only, the conviction cannot be quashed as bad in

Ib.law.

The better practice is for the judge to advise the jury to acquit, unless the testimony of the accomplice be corroborated, not only as to the circumstances of the offence, but also to the participation of the accused in the transaction; and when several parties are charged, that it is not sufficient that the accomplice should be confirmed as to one or more of the prisoners to justify a conviction of those prisoners with respect to whom there is no confirmation. Ib.

The rule that the evidence of an accomplice requires corroboration is not a rule of law, but a rule of general and usual practice; the application of which is for the discretion of the judge by whom the case is tried; and in the application of the rule much depends on the nature of the offence, and the extent of the complicity of the witness in it. Reg. v. Boyes, 1 B. & S. 311; 30 L. J., Q. B. 301.

One prisoner who has pleaded guilty will not be allowed to be is established; and if there is only called as a witness against another, until the judge has heard the evidence necessary to corroborate that of an accomplice. Reg. v. Sparks, 1 F. & F. 388—Hill.

An indictment charged K. and W. with falsely pretending to B. that they had a quantity of tobacco, which they proposed to sell, and did sell to him, and thereby obtained money from him. The evidence was, that K. and P., acting together, were the chief parties by whom the false pretences had been made:—Held, that the acts of P. were the acts of K., and admissible against him upon the indictment. Reg. v. Kerrigan, L. & C. 383; 9 Cox, C. C. 441; 33 L. J., M. C. 71; 12 W. R. 416; 9 L. T., N. S. 843.

Before admitting a person as an approver, it is the duty of the magistrate to inquire into the case and see how far such approver is mixed up with the transaction, or to what extent he would be criminally liable for his acts. Though an accomplice, who had been admitted as an approver, may give evidence, no matter how great his own criminality, it is a wise observation that, without corroboration, a jury should be slow to convict on such evidence. Reg. v. Dunne, 5 Cox, C. C. 507.

A prisoner ought not to be convicted upon the evidence of any number of accomplices, unconfirmed by other testimony. Rex v. Noakes, 5 C. & P. 326—Littledale, Bolland, and Alderson.

Although all persons present at and sanctioning a prize fight, where one of the combatants is killed, are guilty of manslaughter, as principals in the second degree; yet they are not such accomplices as to require their evidence to be confirmed, if they are called as witnesses against other parties charged with the manslaughter. Rex v. Hargrave, 5 C. & P. 170—Patteson.

An accomplice may give evidence before a grand jury to support an indictment against a parti-

ceps criminis. Rex v. Dodd, 1 Leach, C. C. 155.

An accomplice does not require a confirmation as to the person he charges, if he is confirmed as to the particulars of his story. Rex v. Birkett, R. & R. C. C. 251.

On an indictment against principal and accessories, the case against the principal was proved by the testimony of an accomplice, who was confirmed as to the accessories, but not as to the principal. The jury was directed to acquit the prisoners. Rew v. Wells, M. & M. 326—Littledale.

The information of a dead accomplice may be read in evidence against a prisoner. Rex v. Westbeer, 1 Leach, C. C. 12.

An accomplice, who is a witness for the crown, is not entitled as a matter of right to be exempt from being prosecuted for other offences at the same assizes, at which he had been such witness. Rex v. Lee, R. & R. C. C. 361; S. P., Rex v. Brunton, R. & R. C. C. 454.

If the testimony of an accomplice is confirmed so far as it relates to one prisoner, but not as to another, the one may be convicted on the testimony of the accomplice, if the jury deems him worthy of credit. Rev v. Dawber, 3 Stark. 34, 35, n.—Bayley.

And the corroboration of the evidence of an accomplice need not be on every material point, but must be so confirmed as to convince the jury that his statement was correct and true. Rew v. Barnord, 1 C. & P. 88—Hullock.

A person indicted for a misdemeanor may be legally convicted upon the uncorroborated evidence of an accomplice. Rex v. Jones, 2 Camp, 132—Ellenborough; S. P., Rex v. Hastings, 7 C. & P. 152—Denman, Park, and Alderson.

There is a great difference between confirmation of an accomplice as to the circumstances of the

felony, and those which apply to The forthe individual charged. mer only shew that the accomplice was present at the commission of the offence, but the others shew that the prisoner was connected with it. Confirmation of an accomplice as to the commission of the felony, is really no confirmation at all; and though a jury may legally convict on the evidence of an accomplice only, the judges advise them not to act on the evidence of an accomplice, unless he is confirmed as to the particular person who is charged with the offence. Rex v. Wilkes, 7 C. & P. 272 - Alderson.

In a case of felony the testimony of the wife of an accomplice is not such evidence as a jury ought to rely upon as confirmation of the statement of the accomplice. v. Neal, 7 C. & P. 168—Park.

On a charge of stealing two sheep, an accomplice stating that the prisoner himself stole them; and, to confirm him, evidence was given that a quantity of mutton was found in the house in which the prisoner resided, which corresponded with parts of the stolen sheep, is sufficient confirmation of the accomplice to be left to the jury; but, if the confirmation had merely gone to the extent of confirming the accomplice as to a matter connected with himself only, it would not have been sufficient. Reg. v. Birkett, 8 C. & P. 732—Patteson.

The confirmation of an accomplice ought to be as to some matter which goes to connect the prisoner with the transaction, and it would be highly dangerous to act on the evidence of an accomplice unconfirmed with respect to the party accused. Reg. v. Dyke, 8 C. & P. 261—Gurney; S. P., Reg. v. Farler, 8 C. & P. 106-Abinger.

The confirmation of an accomplice should be as to some circumstance affecting the party accused, as by shewing the party and accomplice together under such circumstances as were not likely to have occurred, unless there was concert between them. Reg. v. Farler, 8 C. & P. 106—Abinger.

In a case of night-poaching, the only confirmation was, that, on the evening of the offence, the accomplice and the prisoner were drinking together at a public-house, commonly frequented by the prisoner, and that they both left the house together, when it was shut up for the might. This was considered no sufficient confirmation.

A married woman who consents to her husband's committing an unnatural offence with her, is an accomplice in the felony, and, as such, her evidence requires confirmation, although consent or not consent is quite immaterial to the offence. Reg. v. Jellyman, 8 C. & P. 604— Patteson.

An accomplice, who, in a case out of the statutes, is, under the practice allowed, admitted by the justices of peace as a witness, and is afterwards prosecuted, has only a claim to the mercy of the crown, founded on an express or implied promise of the magistrate on a condition performed; and it depends on his conduct fully and fairly disclosing the joint guilt of himself and his companions, whether the court will admit him to bail, that he may apply for a pardon. v. Rudd, Cowp. 331; 1 Leach, C. C. 115.

# 5. Government Spies.

Upon an indictment for murder, a serjeant in the police, after stating in cross-examination that he attended a debating society where political subjects were discussed, by the direction of the commissioners of police, for the purpose of noticing and reporting, and that he went in private clothes, was asked if he went as a spy:—Held, that the question could not be put, as it required the witness to draw an inference from facts; but that he might | be asked under what directions, and for what purpose he went, and what he did when there. Reg. v. Bernard, 1 F. & F. 240 — Campbell.

A person employed by government to mix with conspirators, and pretending to aid their designs for the purpose of betraying them, does not require corroboration as an accomplice. Reg. v. Mullins, 3 Cox, C. C. 526.

## 6. Competency of Witnesses.

Generally. By 6 & 7 Vict. c. 85, s. 1, "no person offered as a "witness shall be excluded by rea-" son of incapacity from crime, or "interest, from giving evidence in "any criminal proceeding in any "court, but every person so offered "may and shall be admitted to "give evidence on oath or solemn "affirmation, where affirmation is "by law receivable, notwithstand-"ing such person may or shall be "interested, and notwithstanding "such person offered as a witness "may have been previously con-"victed of crime."

By 14 & 15 Vict. c. 99, s. 3, "nothing therein contained shall "render any person, who in any "criminal proceeding is charged "with the commission of any in-"dictable offence, or any offence "punishable on summary convic-"tion, competent or compellable to "give evidence for or against him-"self or herself, or shall render any "person compellable to answer any "question tending to criminate him-"self or herself, or shall in any "criminal proceeding render any husband competent or compel-"lable to give evidence for "against his wife, or any wife com-" petent or compellable to give evi-"dence for or against her husband." By 18 & 19 Vict. c. 126, s. 22,

"reciting that it is expedient to

"amend the law as to witnesses in

"juries to property, it is enacted, "that in all cases where any justice " or justices of the peace have pow-"er to order a sum of money to be "forfeited and paid to the party "aggrieved, as amends or compen-" sation for any injury to property, "real or personal, the right of such party to receive the money so or-"dered to be paid shall not be af-"fected by such party having been "examined as a witness in proof of " the offence."

Witnesses for Prisoner. —By 30 & 31 Vict. c. 35, ss. 1, 2, 3, "de-"positions of witnesses for prisoner "are to be taken, and witnesses "bound by recognizances for pris-"oner are to be allowed their ex-" penses."

An information against a party, under 1 & 2 Will. 4, c. 32, s. 23, for unlawfully using snares for taking game, he not being authorized so to do for want of a game certificate, is a criminal proceeding for an offence punishable on summary conviction within sect. 3 of the 14 & 15 Vict. c. 99, and therefore the party charged is not rendered a competent witness by that statute. Cattell v. Ireson, 4 Jur., N. S. 560

Upon a proceeding under 9 Geo. 4, c. 61, s. 21, against an alehouse keeper, for unlawfully and knowingly permitting divers persons of notoriously bad character to assemble and meet together in his house and premises against the tenure of his licence, such alehouse-keeper is not a competent witness, and cannot give evidence in his own behalf. Parker v. Green, 2 B. & S. 299; 9 Cox, C. C. 169; 31 L. J., M. C. 133; 6 L. T., N. S. 46.

If two are guilty of a murder, and one is indicted and the other not, the party not indicted is a good witness for the crown. Rex v. Tinck-

ler, 1 East, P. C. 354.

The persons who are supposed to "cases of wilful or malicious in- have been the seconds at a duel may refuse to give evidence on the trial of the principals. Rex v. England, 2 Leach, C. C. 767.

But their testimony may be received as the testimony of persons admitted witnesses for the crown. Ib.

And if once sworn, they must disclose the whole truth, although they may involve themselves in the guilt of the transaction. Ib.

The competency of a witness may be tried by examining him on the voir dire or by evidence aliunde. Wakefield's case, 2 Lewin, C. C. 279 —Hullock.

A lunatic patient, who had been in confinement in a lunatic asylum, and who laboured under the delusion, both at the time of the transaction and of the trial, that he was possessed by 20,000 spirits, but whom the medical witness believed to be capable of giving an account of any transaction that happened before his eyes, and who appeared to understand the obligation of an oath, and to believe in future rewards and punishments, was called as a witness on a trial for manslaughter:—Held, that his testimony was properly received in evidence; and that where a person under an insane delusion is called as a witness, it is for the judge, at the time, to say whether he is competent to be a witness, and it is for the jury to judge of the credit that is to be given to his testimony. v. Hill, 2 Den. C. C. 254; T. & M. 582; 15 Jur. 470; 5 Cox. C. C. 259.

If upon his examination upon the voir dire, he exhibits a knowledge of the religious nature of an oath, it is a ground of his admission. Ib.

It is the duty of the judge presiding at a trial to decide as to the competency of a witness; and if he has admitted a witness to give evidence, but upon proof of subsequent facts affecting the capacity of the witness and of observations of his

changes his opinion as to his competency, the judge may stop the examination of the witness, strike his evidence out of the notes, and direct the jury to consider the case exclusively with reference to the evidence of the other witnesses. Reg. v. Whitehead, 1 L. R., C. C. 33; 35 L. J., M. C. 186; 14 W. R. 677; 14 L. T., N. S. 489.

A. and B. being indicted for stealing, and C. for receiving, B. pleaded guilty, and was tendered as witness against A. and C. He was objected to by the counsel for the prisoners, as inadmissible: —Held, an admissible witness at common Reg. v. Hinks, 1 Den. C. C. law.

84; 2 C. & K. 462.

A., B., C. and D. were indicted together. After plea, and before they were given in charge to the jury, the court allowed D. to be removed from the dock, and examined as a witness against his associates. Reg. v. Gerber, T. & M. 647—Williams.

On an indictment for perjury alleged to have been committed at the quarter sessions, the chairman of the quarter sessions ought not to be called upon to give evidence as to what the defendant swore at the quarter sessions. Reg. v. Gazard, 8 C. & P. 595—Patteson.

Where two prisoners are jointly indicted for a felony and plead not guilty, but only one is given in charge to the jury, the other is an admissible witness, although his plea of not guilty remains on the record undisposed of. Winsor v. Reg. (in error), 1 L. R., Q. B. 390; 12 Jur., N. S. 561; 35 L. J., M. C. 161; 14 W. R. 695; 14 L. T., N. S. 567 — Exch. Cham.

A. and B. were jointly charged in the same indictment with breaking into a house and stealing goods. A. pleaded guilty, and B. pleaded not guilty, and was tried. A.'s plea of guilty was recorded, but no sentence had been passed on him, B. subsequent demeanour, the judge wished to call A as a witness for

him :-Held, that he might do so. | Reg. v. George, Car. & M. 111 -Coltman.

A prisoner who pleads guilty to an indictment, and who has been previously convicted of felony, is a competent witness against other prisoners charged in the same indictment. Reg. v. Drury, 3 C. & K. 190-Rolfe; S. P., Reg. v. Arundel, 4 Cox, C. C. 260—Patteson.

A convict under sentence of death is incapable of being called as a Reg. v. Webb, 11 Cox, C. witness. C. 133—Lush.

Two females being jointly indicted at the assizes for felony, the jnry, not agreeing, was discharged by the judge from giving a verdict. subsequent assize, one was again put on her trial, and the other admitted to give evidence, without having withdrawn her plea of not guilty, and a nolle prosequi not having been entered:—Held, that she was a competent witness. Winsor v. Reg. (in error), 7 B. & S. 490— Exch. Cham.

Husband and Wife.]—By 14 & 15 Vict. c. 99, s. 3, "nothing there-"in contained shall in any criminal "proceeding render any husband "competent or compellable to give "evidence for or against his wife, "or any wife competent or com-"pellable to give evidence for or "against her husband."

By 16 & 17 Vict. c. 83, s. 2, "nothing therein contained shall "render any husband competent or "compellable to give evidence for "or against his wife, or any wife "competent or compellable to give "evidence for or against her hus-"band, in any criminal proceeding, " or in any proceeding instituted in " consequence of adultery."

By s. 3, "no husband shall be "compellable to disclose any com-"munication made to him by his "wife during the marriage, and no "wife shall be compellable to dis"her by her husband during the "marriage."

In all cases of personal injuries committed by the husband or wife against each other, the injured party is an admissible witness against the other. Rex v. Jagger, 1 East, P. C. 455—Buller; S. P., Reg. v. Pearce, 9 C. & P. 667.

On an indictment for larceny the wife of a receiver who is not indicted cannot be compelled to give her evidence against the prisoner. Rexv. Ast, Car. C. L. 66-Macdonald and Lawrence.

On an indictment against the wife of W. S. and others, for a conspiracy in procuring W. S. to marry, W. S. is not a competent witness for the prosecution. Rex v. Serjeant, R. & M. 352—Abbott.

The wife of one of several prisonis inadmissible as a witness. Rex v. Hood, 1 M. C. C. 281; S. P., Rex v. Smith, Ib. 289.

Even to prove an alibi by the Reg. v. Denslow, 2 Cox, C. C. 230—Cresswell & Williams.

A. and B. were indicted for burglary and stealing. A part of the stolen property was found in the house of each of them: -Held, that the wife of A. was a competent witness to prove that she took to B.'s house the stolen property that was found there. Reg. v. Sills, 1 C. & K. 494—Tindal.

A wife is not a competent witness against her husband, charged under the Vagrant Act (5 Geo. 4, c. 83, s. 3), with neglecting to maintain her, whereby she became chargeable to the parish. Reeve v. Wood, 5 B. & S. 364; 11 Jur., N. S. 201; 34 L. J., M. C. 15.

A reputed first wife cannot give evidence in favour of her supposed first husband. Peat's case, 2 Lewin, C. C. 111—Alderson.

One of two prisoners had married his deceased wife's sister:—Held, that she was a competent witness against him upon his trial. Reg. v. "close any communication made to | Young, 5 Cox, C. C. 296—Erle.

A witness for the prosecution was examined on the part of the prisoners on the voir dire, and deposed that she was married to one of them:—Held, that she might be further examined on the voir dire, on the part of the prosecution, to prove that the same prisoner had been previously married to her sis-The witness stated, on such further examination, that she and her sister, who was seven years older than herself, had always lived together with their parents, and that she always believed her to be her sister:—Held, sufficient proof of the relationship. Ib.

The prisoner was indicted for obtaining money from the trustees of a savings bank, by falsely pretending that a document produced by the wife of D. had been filled up by D.'s authority; and in another count for conspiring with the wife of D. to cheat the bank. D.'s wife presented the document, which had been fraudulently filled up at the instance of the prisoner, and obtained the money, and afterwards eloped with the prisoner. D's evidence was necessary to shew that he had given no authority, but it was objected to on the ground that it implicated his wife:—Held, that D.'s evidence was admissible, as the wife was not charged upon the indictment. v. Halliday, 8 Cox, C. C. 298.

# 7. Compelling Attendance.

Where a witness was subpænaed by a defendant indicted for a conspiracy, and before he was examined requested to have his expenses paid, and stated that no money was paid to him at the time he was served, he was obliged to give evidence, although the defendant refused to pay such expenses, and although the indictment was removed by certiorari, and came down for trial at the assizes as a civil record. Rex v. Cooke, 1 C. & P. 322—Park.

A subpæna may be issued from the crown office, requiring a witness to attend at the assizes in the country, to give evidence in support of an intended prosecution for a felony; and the court will grant an attachment against him for not attending in obedience to the subpæna. Rex v. Ring, 8 T. R. 585.

In a criminal case, a person, who is present in court, when called as a witness, is bound to be sworn and to give his evidence, although he has not been subpensed. Rex v. Sadler, 4 C. & P. 218—Littledale: S. P., Blackburn v. Hargreave, 2 Lewin, C. C. 259—Hullock.

#### 8. Swearing.

By 24 & 25 Vict. c. 66, " reciting "that it is expedient to grant relief "to persons who may refuse or be "unwilling, from alleged conscien-"tions motives to be sworn in crim-"inal proceedings, it is enacted, if "any person called as a witness in "any court of criminal jurisdiction " in England or Ireland, or required "or desiring to make an affidavit " or deposition in the course of any "criminal proceeding, shall refuse " or be unwilling, from alleged con-" scientious motives, to be sworn, it "shall be lawful for the court or "judge, or other presiding officer or person qualified, to take affi-"davits or depositions, upon being "satisfied of the sincerity of such "objections, to permit such person, "instead of being sworn, to make "his or her solemn affirmation or "declaration in the words follow-"ing, that is to say: "I, A. B., do "solemnly, sincerely, and truly af-" firm and declare, that the taking "of any oath is according to my " religions belief unlawful, and I do "also solemnly, sincerely, and truly "affirm and declare," &c., which " solemn affirmation and declaration "shall be of the same force and ef-"fect as if such person had taken "an oath in the usual form."

And by s. 2, "if the declaration "or affirmation is false, the party "making same is liable to the pen-

"alties and punishment of perjury."
By 32 & 33 Vict. c. 68, s. 4, "if
"any person called to give evidence
"in any court of justice, whether in
"a civil or criminal proceeding,
"shall object to take an oath, or
"shall be objected to as incompe"tent to take an oath, such person
"shall, if the presiding judge is sat"isfied that the taking of an oath
"would have no binding effect on
"his conscience, making the follow"ing promise and declaration:

"I solemnly promise and declare "that the evidence given by me to "the court shall be the truth, the "whole truth, and nothing but the

"'truth':

"And any person who, having "made such promise and declara"tion, shall wilfully and corruptly "give false evidence, shall be liable "to be indicted, tried and convicted "for perjury as if he had taken an "oath."

A witness cannot be sworn to give evidence unless he has a religious belief. *Maden* v. *Catanach*, 7 H. & N. 360; 31 L. J., Exch. 118; 7 Jur., N.S. 1107; 10 W.R. 112; 5 L. T., N.S. 288.

No one can give evidence in a court of justice without being sworn, unless he belongs to one of the classes for whom special provision has been made by the legislature.

A Scotch covenanter may give evidence in a criminal prosecution, on being sworn according to the custom of his sect, without kissing the book. *Mildrone's case*, 1 Leach, C. C. 412.

So a Mahometan may be sworn on the Alcoran in a prosecution for a capital offence. Rex v. Morgan, 1 Leach, C. C. 54.

A person who has no notion of eternity, or of a future state of rewards and punishments, cannot be examined as a witness, but the trial may be postponed until the witness is instructed in the nature of this

Fish. Dig.—43.

obligation. Rew v. White, 1 Leach, C. C. 430.

An infant cannot, under any circumstances, be admitted to give evidence, except upon oath. Rex v. Powell, 1 Leach, C. C. 110.

A witness, though deaf and dumb, may be sworn and give evidence on an indictment for felony, if intelligence can be conveyed to, and received by him, by means of signs and tokens. Ruston's case, 1 Leach, C. C. 408; S. P., Rex v. Jones, 1 Leach, C. C. 452, n.

Where a bill for rape on a child under the age of ten has been ignored by the grand jury, in consequence of the judge refusing to allow the child to be sworn as a witness, on the ground of her want of knowledge of the obligation of an oath, the prisoner was ordered to be detained in custody until the child could be properly instructed. Reg. v. Baylis, 4 Cox, C. C. 23—Erle.

If on an indictment for felony, after the jury has delivered a verdict of guilty, it is discovered that one of the witnesses for the prosecution has given his evidence without having been previously sworn; the proper course to pursue is to direct the jury to reconsider the case, dismissing from their minds the evidence of that particular witness. Reg. v. James, 6 Cox, C. C. 5.

Witnesses are sworn by the court through the instrumentality of some of its officers, and it is not material whether the oath is administered by the crier or clerk of the peace, so that it is done in open court. Reg. v. Tew, Dears. C. C. 429; 24 L. J., M. C. 62.

Mode of swearing Chinese witnesses. Reg. v. Entrehman, Car. & M. 248—Gurney.

A Chinese, who is sworn according to a form which is obligatory upon his conscience, is a good witness in a court of law. *Ib*.

A negro, who was called as a witness, stated, before he was sworn,

that he was a Christian, and had been baptized:—Held, that he ought to be sworn, and that no further question could be asked him before he was so. Reg. v. Serva, 2 C. & K. 53—Platt.

## 9. Ordering to leave Court.

Where a witness for a prosecution remains in court after an order for the witnesses to withdraw, the judge may still allow him to be examined, subject to observations on his conduct for disobeying the order. Rex v. Colley, M. & M. 329—Littledale and Gaselee.

It is almost a matter of right for a party to have a witness go out of court while a legal argument is going on as to his evidence. Reg. v. Murphy, 8 C. & P. 297—Coleridge.

The witnesses had been ordered out of court, but the attorney remained in court:-Held, that he could not be examined as a witness. Rex v. Webb, 3 Stark. L. of Ev. 1733—Best.

On a trial for arson, a witness for the prisoner had left the court, on an order being given for the witnesses to go out of court: but he had afterwards come into court again, and heard a part of the evidence: he was allowed to be examined. Rex v. Brown, 4 C. & P. 588, n.-Patteson.

But on the trial of an indictment for perjury, all the witnesses were ordered out of court. After this order a witness for the prosecution remained in court: the judge would not allow him to be examined. Rex v. Wylde, 6 C. & P. 380—Park.

# 10. Names on back of Indictment.

Counsel for the prosecution is bound to call all the witnesses on the back of an indictment. He may use his own discretion, but must have the witnesses in attendance. If the prisoner wishes to have a witness called, when not called for the prosecution, the witness becomes his witness, and the counsel for the cannot ask anything that does not

prosecution will have the right to reply. Reg. v. Cassidy, 1 F. & F. 79—Parke; S. P., Reg. v. Woodhead, 2 C. & K. 520—Alderson.

Where there are witnesses on the back of the indictment who have not been called, the prisoner may insist on their being put into the box as the witnesses for the crown, in order that they may be cross-examined in his behalf. Reg. v. Barley, 2 Cox, C. C. 191—Pollock.

The court has no power to oblige a prosecutor to give to a defendant the additions and places of residence of witnesses named on the back of Reg. v. Gordon, 2 an indictment. D., N. S. 417; 6 Jur. 996; 12 L. J., M. C. 84—B. C.—Patteson.

A prisoner indicted for felony is not entitled to a list of the names and addresses of the witnesses on the back of the indictment, but he will be allowed to inspect the indictment for the purpose of seeing the names of such witnesses. v. Lacey, 3 Cox, C. C. 517.

It is, in general, a matter entirely within the discretion of counsel for the prosecution, whether all the witnesses at the back of the bill should be called on behalf of the crown or not; and although the judge has the power to interfere, he will only exercise it in extreme cases. Reg.v. Edwards, 3 Cox, C. C. 82—Erle.

Although the counsel in a prosecution for felony is not bound to call every witness whose name is on the back of the indictment; yet the judge may do so, to allow the prisoner's counsel an opportunity of cross-examining them. RexSimmonds, 1 C. & P. 84—Hullock.

If counsel for the prosecution calls a witness whose name is on the back of the indictment, but does not examine him, and such witness is examined by the prisoner's counsel, any question put by the prosecutor's counsel after this must be considered as a re-examination, and therefore the prosecutor's counsel arise out of the previous examination by the prisoner's counsel. Rex v. Beezely, 4 C. & P. 220—Littledale.

Though the counsel for the prosecution may content himself with putting into the box a witness whose name is on the back of the bill, without asking him any questions on the part of the prosecution; yet it is better that he should be examined, whether his evidence is favourable to the prosecution or not, as the only object to the investigation is to discover the truth. Reg.  $\vee$  Bull, 9 C. & P. 22-Vaughan and Williams.

If the counsel for the prosecution declines calling a witness whose name is on the back of the indictment, it is in the discretion of the judge who tries the case, whether the witness shall or shall not be called, for the prisoner's counsel to examine him before the prisoner is called on for his defence. Rex v. Bodle, 6 C. & P. 186—Gaselee.

If the witness is so called, the judge will allow the examination of the witness to assume the shape of a cross-examination, but will not allow the prisoner's counsel to call any witnesses to contradict him. 1b.

The calling of a witness, whose name is on the back of the indictment for the other side, to cross-examine him, is by no means of course. It is discretionary, even in felony, but it is a discretion always exercis-Reg. v. Vincent, 9 C. & P. 91 ed. -Alderson.

Where an indictment is tried at nisi prius, the nisi prius record does not shew what names were on the back of the indictment. Rex v. Smyth, 5 C. & P. 201—Tenterden.

- 11. Declarations in Articulo Mortis. See page 375.
- 12. Examining and Cross-examining Witnesses.

Fixamining.]—A witness for the crown cannot, in cross-examination, | s. 3, " in all criminal cases a party

be compelled to state through what channel he made a disclosure to government, either immediately or mediately. Watson's case, 2 Stark. 116.

A witness for the prosecution in felony may be asked in cross-examination whether he has not stated certain facts before the grand jury, and the witness is bound to answer that question. Reg. v. Gibson, Car.& M. 672—Parke.

If a prisoner's counsel elicits, by his cross-examination of the witnesses for the prosecution, a statement that the prisoner has borne a good character, evidence may be given of a previous conviction, just the same as if witnesses to character had been called on his behalf. Req. v. Gadbury, 8 C. & P. 676—Parke.

Where one prisoner calls a witness who gives evidence tending to criminate another prisoner, the counsel of the latter has a right to cross-examine the witness, and address the jury on his evidence. Reg. v. Luck or Burdett, Dears. C. C. 431; 3 C. L. R. 440; 1 Jur., N. S. 119; 24 L. J., M. C. 63.

L., B. & C. were indicted for larceny, and were defended by separate counsel. At the close of the case for the prosecution C. was acquitted by direction of the court, and was afterwards called by L. as his witness. C.'s evidence tended to criminate B.:—Held, that B.'s counsel was entitled to cross-examine the witness C., and reply upon his evidence. Ib.

Contradicting.]—The sole witness to the commission of an offence having sworn that she did not know the prisoner at the time, evidence was admitted for the defence that she had in fact known him for years. Reg. v. Dennis, 3 F. & F. 502— Byles.

Discrediting Character of Adverse Witness. - By 28 & 29 Vict. c. 18,

"producing a witness shall not be "allowed to impeach his credit by "general evidence of bad character; "but he may, in case the witness "shall, in the opinion of the judge, "prove adverse, contradict him by "other evidence, or, by leave of the "judge, prove that he has made at "other times a statement inconsist-"ent with his present testimony; "but before such last-mentioned "proof can be given, the circum-"stances of the supposed statement, " sufficient to designate the particu-"lar occasion, must be mentioned "to the witness, and he must be "asked whether or not he has made "such statement."

Cross-examining as to previous Contradictory Statements of Adverse Witness.] - By 28 & 29 Vict. c. 18, s. 4," if a witness, upon cross-"examination as to a former state-" ment made by him relative to the "subject-matter of the indictment "or proceeding, and inconsistent "with his present testimony, does "not distinctly admit that he has "made such statement, proof may " be given that he did in fact make "it; but before such proof can be "given, the circumstances of the "supposed statement, sufficient to "designate the particular occasion, " must be mentioned to the witness, "and he must be asked whether or "not he has made such statement." And by s. 5, "a witness may be

"statements made by him in writ"ing, or reduced into writing, rela"tive to the subject-matter of the
"indictment or proceeding, without
"such writing being shewn to him;
"but if it is intended to contradict
"such witness by the writing, his
"attention must, before such con"tradictory proof can be given, be
"called to those parts of the writ"ing which are to be used for the
"purpose of so contradicting him:
"provided always, that it shall be

"cross-examined as to previous

"time during the trial, to require "the production of the writing for "his inspection, and he may there upon make such use of it for the purposes of the trial as he may "think fit."

Calling Witnesses after Close of Case.]—After the cases for the prosecution and prisoner are closed, the judge will not, at the suggestion of the counsel for the prosecution, examine a witness not before called. Reg. v. Haynes, 1 F. & F. 666—Bramwell.

Impeachment of Credit of Witnesses.]—In order to impeach the credit of witnesses for the prosecution, the prisoner may call witnesses to prove that, from their knowledge of the general reputation of the witnesses for the prosecution, they would not believe them upon their oaths. Reg. v. Brown, 36 L. J., M. C. 59; 1 L. R., C. C. 70; 16 L. T., N. S. 364; 15 W. R. 795; 10 Cox, C. C. 453.

## 13. Declining to answer.

If a witness claims the protection of the court, on the ground that his answer would tend to criminate himself, and there appears reasonable ground to believe that it would do so, he is not compellable to answer; and if obliged to answer notwithstanding, what he says must be considered to have been obtained by compulsion, and cannot be given afterwards in evidence against him. Reg v. Garbett, 2 C. & K. 474; 1 Den. C. C. 236; 2 Cox, C. C. 448.

It makes no difference in the right of the witness to protection, that he had before answered in part, as he is entitled to claim the privilege at any stage of the inquiry; and no answer forced from him by the presiding judge (after such a claim) can be afterwards given in evidence against him. Ib.

"provided always, that it shall be A witness is not only not bound competent for the judge, at any to answer that which will criminate

him, but he is not bound to answer anything that tends to criminate him. In a prosecution for libel, a witness is not bound to answer whether he has written a particular paragraph in a newspaper, but he must answer whether he knew whose writing it was, but he is not bound to name the person whose writing he knew it to be. Rex v. Slaney, 5 C. & P. 213—Tenterden.

A Roman Catholic priest, called as a witness, is bound to answer the question from whom he received the property (a watch), alleged to be stolen, although delivered to him by a party in connexion with the confessional. Reg. v. Hay, 2 F. & F. 4—Hill.

If a witness objects to answer questions on the ground that they tend to criminate him, the counsel on the opposite side cannot argue in support of the witness's objection. Rex v. Adey, 1 M. & Rob. 94.

On the trial of an information for bribery at a parliamentary election, filed by the attorney general, in pursuance of a resolution of the House of Commons, a person, alleged in the indictment to have been bribed, was called as a witness; he refused to answer any question, on the ground that the answer would tend to criminate him. A pardon under the great seal was then handed to the witness, but he still refused to answer, upon which the judge compelled him to answer, and on his evidence the defendant was convicted:—Held, that the pardon took away the privilege of the witness so far as any risk of prosecution at the suit of the crown was concerned; and that, though witness might still be liable to an impeachment by the House of Commons, notwithstanding the pardon, by reason of the 12 & 13 Will. 3, c. 2, yet that was so unlikely to happen that the witness could not be said to be in any real danger, and he was therefore rightly compelled to answer. Reg. v. Boyes, 1 B. & S.

311; 9 Cox, C. C. 32; 30 L. J., Q. B. 301; 7 Jur., N. S. 1158; 2 F. & F. 157; 9 W. R. 690; 5 L. T., N. S. 147.

To entitle a witness to the privilege of not answering a question as tending to criminate him, the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. If the fact of the witness being in danger is once made to appear, great latitude should be allowed to him in judging of the effect of any particular question. The danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law, in the ordinary course of things, and not a danger of an imaginary character, having reference to some barely possible contingency. Ib.

## 14. Evidence of Character.

If evidence of good character is given on behalf of a prisoner, evidence of bad character may be given in reply. Reg. v. Rowton, L. & C. 520; 10 Cox, C. C. 25; 11 Jur., N. S. 325; 34 L. J., M. C. 57; 13 W. R. 436; 11 L. T., N. S. 745.

In either case the evidence must be confined to the prisoner's general reputation; and the individual opinion of the witness as to his disposition founded upon his own experience and observation, is inadmissible. *Ib*.

Evidence of particular facts cannot be given upon the question of character. Ib.

Evidence of character must be evidence of general reputation only, and a witness's individual opinion respecting the character and disposition of the prisoner, with reference to the charge, is inadmissible. *Ib.* 

A man was indicted for an indecent assault, and upon the trial called witnesses, who gave him a good character as a moral and well-conducted man. A witness was then called by the prosecution, who was asked "What is the prisoner's general character for decency and morality?" and in answer said, "I know nothing of the neighbourhood's opinion, because I was only a boy at school when I knew him; but my opinion, and the opinion of my brothers, who were also pupils of his, is, that his character is that of a man capable of the grossest indecency and the most flagrant immorality":-Held, that the answer was not admissible in evidence. Ib.

Upon an indictment for assaulting a peace officer in the execution of his duty, where the assault was committed by the prisoner in resisting his arrest by the officer on a charge of felony, the officer cannot, upon his examination in chief, be questioned as to his knowledge of the prisoner's character for the purpose of shewing that he had reasonable cause to suspect the prisoner of having committed felony for which he was arrested. Reg. v. Tuberfield, L. & C. 495; 10 Cox, C. C. 1; 34 L. J., M. C. 20; 10 Jur., N. S. 1111; 13 W. R. 102; 11 L. T., N. S. 385.

The proper course under such circumstances is, to ask the officer generally whether he had reason to suspect the prisoner, leaving the prisoner's counsel to inquire into the grounds of suspicion, if he thinks fit to do so. Ib.

In order to impeach the character of a witness for veracity, witnesses may be called to prove that his general reputation is such that they would not believe him upon oath. Reg. v. Brown, 1 L. R., C. C. 70; 36 L. J., M. C. 5; 10 Cox, C. C. 453.

It is not essential that witnesses, who state that they would not believe another person on his oath, should have ever heard such person give evidence upon oath; as the real question is, whether the witnesses have such a knowledge of the

enables them conscientiously to say that it is impossible to place any reliance on any statement that such person may make. Rex v. Bispham, 4 C. & P. 392—Garrow and Parke.

It is not usual to cross-examine witnesses to character except the counsel cross-examining has some distinct charge on which to crossexamine them. Rex v. Hodgkiss, 7 C. & P. 298—Alderson.

In general, witnesses to character cannot be examined after verdict and before sentence, where the defendant might have examined them upon the trial. Reg. v. Mullins, 3 Cox, C. C. 526.

## 15. Evidence of Identity.

A witness, called to prove that he had seen a prisoner at a particular spot at a certain time, added that he had since seen a number of men in gaol, and had pointed out one:—Held, that the following was a proper form of question to put to the witness-"Who did you point him out as being?" Reg. v. Blackburn, 6 Cox, C. C. 333—Talfourd.

A person indicted with others for an offence, but against whom the bill has been thrown out, may, if he is in custody at the time of the trial of the others, be placed at the bar to be identified as one who was in their company. Rex v. Deering, 5 C. & P. 165—Garrow.

It becoming necessary, on the part of the crown, to identify three other prisoners, charged in the same indictment with the party tried, held, that the counsel for the proseeution might ask in the most direct terms whether any of the prisoners was the person meant by the Watson's case, 2 Stark. witness. 116.

## 16. Privileged Communications.

A prisoner was in custody on a charge of forgery, and was not allowed even to see his wife; he wrote to a friend "to ask Mr. G., person's character and conduct as or some other solicitor, whether the

punishment was the same whether the names forged were those of real or fictitious persons." Mr. G. was not the prisoner's attorney, though he was an attorney:—Held, that this was not a privileged communication. Rex v. Brewer, 6 C. & P. 363—Park.

H., who was tried for forging the will of S. J., had sent the forged will to his attorney, Mr. M., with some deeds of S. J., ostensibly for the purpose of asking his advice, but really that he might find the will and act on it. It was afterwards produced by Mr. M. before the magistrates, when Η. charged before them of forging At the trial of H. for the forgery Mr. M. was called to produce the will, which he did, without any The officer objection being taken. of the court was proceeding to read it, when the prisoner's counsel objected to the reading of it, as being privileged in the hands of Mr. M. The judge directed it to be read in evidence:-Held, that it was properly so read; it not having been put into the hands of Mr. M. in professional confidence, even if that would have made a difference. Reg. v. Hayward, 2 C. & K. 234; 2 Cox, C. C. 23—C. C. R.

The wife of A. went to B., an attorney, and produced a forged will to him, and asked him to advance money to A. on the property mentioned in it. B. was not then the attorney of A., or in any way A.'s wife acting as his solicitor. left the forged will with B., who made a copy of it. A. afterwards called on B., who told all that had occurred and returned him the forged will, declining to advance any money: — Held, that the conversation between A.'s wife and B. was not a privileged communication; and that on the trial of A. for forgery, evidence might be given of it; and also, that the copy of the forged will made by B. might

be given in evidence, notice having been given to A. to produce the original. Reg. v. Farley, 2 C. & K. 313; 1 Den. C. C. 197; 2 Cox, C. C. 82.

Indictment for forging the will of W. T., first, with intent to defraud the heir-at-law of the said W. T.; second, with intent to defraud some person or persons unknown. Quære, whether (under the circumstances) a valid objection could be taken to the will being produced in evidence by an attorney, at the trial, on the ground of its being privileged communication? Reg. v. Tylney, 1 Den. C. C. 319; 18 L. J., M. C. 38.

A prisoner was indicted for forging a will. The forged instrument had been given by the prisoner to his attorney, ostensibly for professional purposes, but, in the opinion of the judge, with some very different object. On objection that it was a privileged communication, and therefore could not be read:—Held, invalid. Reg. v. Jones, 1 Den. C. C. 166.

The real prosecutor had communications with her attorney in reference to certain dealings with the prisoner. The attorney was called as a witness for the prosecution:—Held, that letters written by the client to her attorney could not be put in by the prisoner's counsel. Reg. v. Leverson, 11 Cox, C. C. 152.

Held, that the prosecutrix and her attorney might be cross-examined in reference to any privileged communications as to which they had given answers to questions addressed to them by the counsel for the prosecution, but not in respect to such matters about which the attorney had volunteered information unasked. *Ib*.

Held, also, that matters which transpired during interviews at which the prisoner was present were not privileged. *Ib*.

Mode of taking Evidence of Witnesses at Trial. ] - A prisoner for felony was tried, but the jury was discharged, owing to being unable to agree. On being put on trial before a second jury, the judge, at the prisoner's request, instead of having the witnesses examined, simply called and swore them, and read over his notes, allowing liberty to examine and cross-examine each witness thereafter:—Held, that this was an irregular practice, whether the prisoner assented to it or not. Reg. v. Bertrand, 16 L. T., N. S. 752; 1 L. R., P. C. 520; 36 L. J., P. C. 51; 16 W. R. 9; 10 Cox, C. C. 618.

## 17. Evidence of other similar Offences.

It cannot be shewn on the trial of an indictment that the prisoner has a general disposition to commit the same kind of offence as that charged against him; therefore an admission by the prisoner, charged with an infamous crime, that he had committed the same offence at another time, and with another person, and that he had a tendency to such practices, was rejected. Rex v. Cole, Phil. Evid. 170.

But it is no objection to evidence on an indictment for felony, that it also goes to shew the prisoner guilty of another felony. Rev v. Moore, 2 C. & P. 235 — Burrough.

In answer to an alibi set up on a trial for felony, the prosecutor may shew the circumstances under which the prisoner was seen near the spot in question; though those circumstances involve the commission of another felony by him. Reg. v. Briggs, 2 M. & Rob. 199 — Alderson.

Where several felonies are so connected together as to form part of one entire transaction, evidence of them all may be given in order to prove a party indicted guilty of one. Rex v. Ellis, 6 B. & C. 145; 9 D. & R. 174.

Upon a trial for felony, other felonies, which have a tendency to establish the scienter, may be given in evidence for that purpose. Reg. v. Weeks, L. & C. 18.

On an indictment for arson in setting fire to a rick, the property of A., evidence may be given of the prisoner's presence and demeanour at fires of other ricks, the property respectively of B. and C., occurring the same night, although those fires are the subject of other indictments against the prisoner, such evidence being important to explain his movements and general conduct before and after the fire of A.'s rick; but evidence is not admissible of threats, statements or particular acts pointing alone to the other indictments, and not tending to implicate or explain the conduct of the prisoner in reference to that fire. Reg. v. Taylor, 5 Cox, C. C. 138—Patteson.

Evidence of another felony is admissible to shew the animus of the prisoner, or if the act done was wilful or accidental. A. was indicted for setting fire to a rick on the 29th of March by discharging a gun close to it. Evidence was admitted of his having been seen near the same rick with a gun on the 28th, when it had been also set on fire. Reg. v. Dosset, 2 Cox, C. C. 243—Maule.

Upon a trial for breaking into a booking-office of a railway station, evidence was admitted that the prisoners had, on the same night, broken into three other booking-offices belonging to three other stations on the same railway, the four cases being all mixed up together. Reg. v. Cobden, 3 F. & F. 833—Bramwell. See Reg. v. Rearden, 4 F. & F. 76—Willes.

## 18. Previous Conviction.

(24 & 25 Vict. c. 96, s. 116; 24 & 25 Vict. c. 99, s. 37.)

Before these Statutes. -C., with

others, was charged in the first | count of an indictment with larceny from the person. The indictment contained two other counts, each charging a previous conviction against C.: — Held, that any number of previous convictions may be alleged in the same indictment, and, if necessary, proved against the prisoner. Reg. v. Clark, Dears. C. C. 198; 3 C. & K. 367; 17 Jur. 582; 22 L. J., M. C. 135; 6 Cox, C. Ć. 210.

On a trial for felony after a previous conviction the prisoner is to be arraigned on the whole indictment, and the jury is to have the new charge only stated to them, and if no evidence to character is given, nothing is to be said to the jury of the previous conviction till they have given their verdict on the new charge, and then, without being re-sworn, the jury is to hear the statement of the previous conviction, and the proof of it. Reg. v. Shuttleworth, 3 C. & K. 375; T. & M. 626; 2 Den. C. C. 351; 15 Jur. 1066; 21 L. J., M. C. 36; 5 Cox, C. C. 369.

On a trial for a felony after a previous conviction if the prisoner's counsel obtains evidence of good character on cross-examination, this entitles the prosecutor to go into evidence of the previous conviction before the jury finds a verdict on the new charge, the same as if the prisoner had obtained evidence of good character by calling a witness. Reg. v. Shrimpton, 3 C. & K. 373; T. & M. 628; 2 Den. C. C. 319; 21 L. J., M. C. 37; 5 Cox, C. C. 387.

It is no objection to an indictment that a previous conviction is stated at the beginning of it, by way of introductory averment, instead of at the end, in the form of a separate count. Reg. v. Hilton, Bell, C. C. 20; 5 Jur., N. S. 47; 28 L. J., M. C. 28; 7 W. R. 59; 8 Cox, C. C. 87.

oner, at the request of his counsel, has not been arraigned on the charge of the previous conviction before the verdict has been given on the subsequent charge, he may afterwards be arraigned thereon, and the jury may afterwards inquire respecting it. Ib.

*Proof.*]—By 14 & 15 Vict. c. 99, s. 13, "whenever in any pro-"ceeding whatever it may be nec-"essary to prove the trial and con-"viction or acquittal of any person "charged with any indictable of-"fence, it shall not be necessary to produce the record of the con-"viction or acquittal of such per-" son, or a copy thereof, but it shall " be sufficient that it be certified or " purport to be certified under the "hand of the clerk of the court or "other officer having the custody " of the records of the court where "such conviction or acquittal took "place, or by the deputy of such "clerk or other officer, that the "paper produced is a copy of the "record of the indictment, trial, "conviction and judgment or ac-"quittal, as the case may be, omit-"ting formal parts thereof."

A previous summary conviction, which, under the above statute, is required to be proved by a certified copy, also requires proof of the prisoner's identity as under 7 & 8 Geo. 4, c. 28, s. 11, which remains in this respect as it stood before. The identity may be proved by evidence from which a jury may draw the conclusions that he is the same person named in the certificate, although no witness saw him convicted at his trial. Leng, 1 F. & F. 77—Byles.

In order to prove the identity of a prisoner who is named in a certificate of a previous conviction, it is not necessary to call a witness who was present at the trial to which the certificate relates, it is sufficient to prove that the prisoner If, to prevent prejudice, the pris- is the person who underwent the

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sentence mentioned in the certifi-Reg. v. Crofts, 9 C. & P. cate.

219—Gurney.

It is sufficient evidence of a previous summary conviction, to shew that the certificate of conviction and the warrant agree, and that the prisoner was received into custody under the warrant, without further proving identity. Reg. v. *Levy*, 8 Cox, C. C. 73—Byles.

By 28 & 29 Vict. c. 18, s. 8, "in "any criminal proceeding a witness "may be questioned as to whether "he has been convicted of any "felony or misdemeanor, and, up-"on being so questioned, if he "either denies or does not admit "the fact, or refuses to answer, it "shall be lawful for the cross-ex-"amining party to prove such con-"viction; and a certificate con-"taining the substance and effect " only (omitting the formal part) of "the indictment and conviction for "such offence, purporting to be "signed by the clerk of the court "or other officer having the cus-"tody of the records of the court "where the offender was convict-"ed, or by the deputy of such clerk " or officer (for which certificate a "fee of 5s. and no more shall be "demanded or taken), shall, upon proof of identity of the person, "be sufficient evidence of the said "conviction, without proof of the " signature or official character of "the person appearing to have " signed the same."

The proper proof that a prisoner was in lawful custody, under a sentence of imprisonment passed at the assizes, is, by the proof of the record of his conviction; and neither the production of the calendar of the sentences signed by the clerk of the assize, and by him delivered to the governor of the prison, nor the evidence of a person who heard sentence passed, is sufficient for this purpose. Reg. v. Bourdon, 2 C. &

K. 366—Maule.

made at the quarter sessions for a borough, purporting to be signed by a person described therein as deputy clerk of the peace of the borough, and having the custody of the records of the quarter sessions, is admissible in evidence, as purporting to be made by an officer having the custody of the records of the court where the conviction was made, within 5 Geo 4, c. 84, s. 24, although the 5 & 6 Will. 4, c. 76, gave no power to appoint a deputy clerk of the peace for a borough within that act. Reg. v. Parsons, 1 L. R., C. C. 24; 12 Jur., N. S. 436; 35 L. J., M. C. 167; 14 W. R. 662; 14 L. T., N. S. 450.

A person de facto filling an office, carrying with it the custody of the records of the court, may lawfully give such a certificate, although he may not hold such office de jure.

Ib.—Bramwell.

## 19. Maps or Plans.

A map or a plan prepared for the purpose of a trial ought not to contain any reference to transactions and occurrences which are the subject-matter of the investigation before the court, and not existing when the survey was made; and if it does, and the objection is taken, the court will not allow the jury to Reg. v. Mitchell, 6 look at it. Cox, C. C. 82—Williams.

#### Letters.

The post-office marks, in town or country, proved to be such, are evidence that the letters on which they are were in the office to which those marks belong at the time those marks specify. Rex v. Plumer, R. & R. C. C. 264.

Though a letter found upon a prisoner may be read, it is no evidence of the facts it states, they must be proved by other evidence. Ιb.

Letters which have never been in the custody of a prisoner, or A certificate of a conviction, any way adopted by him (being intercepted at the post-office), although directed to him, cannot be read in evidence against him. v. Hevey, 1 Leach, C. C. 232, 235.

A letter of instruction from the lords of the Treasury, signed by three lords of the Treasury, is admissible upon proof of the handwriting of the three persons whose names were subscribed to it, without producing the commission. Rex v. Jones, 2 Camp. 131 — Ellenborough.

If a letter, written by one of several prisoners, is read in evidence, and in this letter the names of the other prisoners are mentioned, these names must not be omitted in the reading of the letter, but the judge will tell the jury to pay no attention to the letter, except so far as it affects the writer. Rex v. Fletcher, 4 C. & P. 250—Littledale.

## 21. Proof of Handwriting.

A prisoner's handwriting may be proved by witnesses who have seen him write. Rex v. Hensey, 2 Ld. Ken. 366; 1 Burr. 642.

A person who has received letters purporting to come from a party, and has acted on those letters, may prove the bandwriting of such party. Rex v. Slaney, 5 C. & P. 213—Tenterden.

A policeman who has only once seen a prisoner write, and that since suspicion has been excited against him with reference to the charge upon which he is tried, and upon an opportunity taken by the policeman with the view of being able to speak to his handwriting, is not an admissible witness to prove that a document, the foundation of the charge against the prisoner, is in his hand-Reg. v. Crouch, 4 Cox, writing. C. C. 163-Maule.

By 28 & 29 Vict. c. 18, s. 8, "in "all criminal cases comparison of a "disputed writing with any writing, "proved to the satisfaction of the "judge to be genuine, shall be per-"mitted to be made by witnesses; | prisoner, being in the employ of the

"and such writings, and the evi-"dence of witnesses respecting the "same, may be submitted to the "court and jury as evidence of the "genuineness or otherwise of the "writing in dispute."

## 22. Proof of Documents by Attesting Witnesses.

By 28 & 29 Viet. c. 18, s. 7, "in "all criminal cases it shall not be "necessary to prove by the attest-"ing witness any instrument to the "validity of which attestation is "not requisite, and such instrument "may be proved as if there had " been no attesting witness thereto."

#### 23. Notice to Produce.

Where notice to produce a policy of insurance was given to the prisoner in the middle of the day preceding the trial, the prisoner's residence being thirty miles from the assize town:—Held, that secondary evidence of the policy could not be given. Reg. v. Kitson, Dears. C. C. 187; 17 Jur. 422; 22 L. J., M. C. 118; 6 Cox, C. C. 159.

Upon an indictment for arson, with intent to defraud an insurance society, the nature of the proceedings does not give notice to the prisoner to produce the policy, so as to dispense with actual notice to produce. Ib.

Service of notice to produce on an attorney who had served a notice on behalf of the prisoner, as to an application to bail him upon the charge, is sufficent. Reg. v. Boucher, 1 F. & F. 486-Martin.

A notice to produce a document delivered to an attorney, suggested to be the prisoner's attorney, is (in the absence of evidence that he was so) not a valid notice, so as to enable secondary evidence to be given; and the attorney was not allowed to be asked whether he had shewn the notice to his client. Reg. v. Downham, 1 F. & F. 386—Pollock.

An indictment alleged that the

Post-office, stole a post-letter, to wit, a post-letter directed and addressed as follows, that is to say (setting out the address), which contained property. At the trial, a witness having deposed that he employed a man to post a letter containing the property in question:—Held, that he might be asked how that letter was addressed, although no notice to produce the letter had been given. Rey. v. Clube, 3 Jur., N. S. 698—Pollock.

Where a trial has been postponed from one session to another, a notice to produce served on the prisoner in time for the first session is available for the subsequent one without any fresh service, and service on the prisoner in gaol is sufficient. Reg. v. Robinson, 5 Cox, C. C. 183.

## 24. Production and Inspection of Documents.

On an indictment in the Central Criminal Court, for obtaining money by false pretence, that a parcel contained certain letters of the prosecutrix to the prisoner, which he promised, for a valuable consideration, to give up, and which had been seized under a search warrant, a judge on the rota for the session, after the session had opened, made an order in favor of the prisoner for an inspection of the letters. Reg. v. Colucci, 3 F. & F. 103.

A solicitor for a prisoner is bound to produce a document, when the prisoner is charged with an offence in respect of such document. Reg., v. Brown, 9 Cox, C. C. 281—Willis.

If on the trial of an indictment for publishing an obscene snuff-box, a witness proves that the defendant exhibited to him the box produced on the trial, or a box exactly similar, this is not sufficient, if the witness cannot identify the very box exhibited to him. Rex v. Rosenstein, 2 C. & P. 414—Parke.

In an indictment for perjury committed on the trial of a person for

making a false statutory declaration, the perjury assigned was that the defendant swore that there was no draft of that statutory declaration. The indictment did not shew that the draft was, or had been, in his The draft was suppossession. posed to have been made by a firm of solicitors, of which the defendant was a member, on the occasion of a loan of money. At the trial, secondary evidence of the draft was allowed to be given without a notice to produce having been served on the prisoner, it being proved to have been in his possession:—Held, that a notice to produce was necessary, and that secondary evidence was inadmissible without it. v. Elworthy, 17 L. T., N. S. 293; 1 L. R., C. C. 103; 37 L. J., M. C. 3; 16 W. R. 207; 10 Cox, C. C. 579.

#### 25. On other Points.

Where an indictment charged that a person shot at one Harvey Garnett Phipps Tuckett:—Held, that Tuckett's card, though given to one of the witnesses in the presence of the party charged, could not be given in evidence against him on the trial to prove the name, as its contents were not shewn to have been communicated to him. Reg. v. Douglas, Car. & M. 193—Williams.

#### XLVII. VERDICT.

Though a verdict is recorded, yet if it appears promptly, that it is not according to the intention of the jury, it may be vacated and set right. Rev v. Parkin, 1 M. C. C. 45.

If two are indicted for jointly making a corrupt contract with a third person for the procuring an East India cadetship, one may be convicted, though the other is acquitted. Rew v. Taggart, 1 C. & P. 201—Abbott.

A good finding on a bad count

in an indictment, and a bad finding on a good count, stand on the same footing; both being nullities. O' Connell v. Reg. (in error), 11 C. & F. 155: 9 Jur. 25.

Where a count contains only one charge against several defendants, the jury cannot find any one of the defendants guilty of more than one

charge. Ib.

At sessions the jury gave a special verdict of not guilty, and it was entered in the book of the clerk of the Afterwards, the chairman told the jury they must reconsider their verdict; and they gave a verdict of guilty generally, but recommended the defendant to mercy on account of his not doing the act with a malicious intent; and the verdict was then altered in the book of the clerk of the peace. The court refused to interefere by mandamus to cancel the alterations. Rex v. Suffolk (Justices), 5 N. & M. 139; Rex v. Hughes, 1 H. & W. 313.

One of the jury pronounced a verdict of not guilty, which was entered by the clerk of the peace in his minute book, and the prisoner The other jurywas discharged. men then interfered, and said their verdict was guilty; whereupon the prisoner was brought back, and the jury was again asked for their verdict, when they all said it was guilty, and that they had been A verdict of guilty unanimous. was then recorded:—Held, that the verdict was properly amended; and the conviction must stand. Reg. v. Vodden, Dears. C. C. 229; 17 Jur. 1014; 23 L. J., M. C. 7; 6 Cox, C. C. 226.

A verdict of not guilty can be entered on one count, and of guilty on another. Reg. v. Craddock, 14 Jur. 1031—C. C. R.

Where a jury returns what the judge considers to be an improper verdict, he may direct them to reconsider it, and is not bound to record it unless they insist upon his ground of the improper reception of

doing so. Where the jnry reconsiders their verdict and alters it, the second is the real verdict of the Reg. v. Meany, L. & C. 213; 9 Cox, C. C. 231; 8 Jur., N. S. 1161; 32 L. J., M. C. 24; 11 W. R. 41; 7 L. T., N. S. 393.

Upon an indictment for stealing a watch the jury returned the following verdict: - "We find the prisoner not guilty of stealing the watch, but guilty of keeping it in the hope of reward from the time he first had the watch." The court of quarter sessions directed a verdict of guilty to be entered :—Held, that upon this finding a verdict of not guilty should have been entered. Reg. v. York, 1 Den. C. C. 335; T. & M. 20; 2 C. & K. 841; 12 Jur. 1078; 18 L. J., M. C. 38.

A jury returned a verdict of guilty on an indictment, but recommended the defendant to mercy on the ground that perhaps he did not know that he was acting contrary to law:—Held, that the conviction was not invalidated by this addition to the verdict. v. Crawshaw, Bell, C. C. 303; 8 Cox, C. C. 375; 9 W. R. 38.

Indictment for murder. Defence that deceased committed suicide. Verdict guilty, the jury adding that they believed the act was committed without premeditation. judge refused to receive such a verdict, and directed the jury to say guilty or not guilty. Reg. v. Maloney, 9 Cox, C. C. 6.

### XLVIII. NEW TRIAL.

In what Cases.]—No new trial can be granted in cases of felony. Rex v. Mawbey, 6 T. R. 638.

But with respect to misdemeanors, it is entirely discretionary in the court whether it will grant or refuse a new trial. Ib.

A new trial was granted on the

depositions in a case of felony removed by certiorari. Reg. v. Scaife, 17 Q. B. 238.

But this case has been overruled. Reg. v. Bertrand, 16 L. T., N. S. 752—P. C.

No new trial can be granted on an indictment for perjury, where the defendant is acquitted. *Rex* v. *Brice*, 2 B. & A. 606; 1 Chit. 352.

After a verdict for a defendant, upon an indictment for the non-repair of a highway, the court refused an application for a new trial, on the ground of the improper rejection of evidence; but suspended the judgment in order that another indictment might be preferred. Rew v. Staton, 5 B. & Ad. 52; 2 N. & M. 57; S. P., Rew v. Wandsworth, 1 B. & A. 63; 2 Chit. 282; Reg. v. Challicombe, 6 Jur. 481.

A new trial was refused after a verdict of not guilty, upon an indictment for not repairing a road, when the verdict did not bind the right. Rev v. Burbon, 5 M. & S. 392.

Where, upon trial of an indictment for a misdemeanor, a witness examined before the grand jury was not examined at the trial, and a witness not examined before the grand jury was:—Held, that it was not such a surprise upon the defendants as entitled them to a new trial. Rex v. Hollingberry, 6 D. & R. 345; 4 B. & C. 329.

Upon the trial of an indictment for a misdemeanor, which continued more than one day, the jury, without the knowledge or consent of the defendants, separated at night:—Held, that the verdict was not therefore void; and that it formed no ground for granting a new trial, it not appearing that there was any suspicion of any improper communications having taken place. Rex v. Kinnear, 2 B. & A. 462.

The court refused to grant a rule nisi for a new trial after a verdict for the defendant upon an indictment for non-repair of a churchyard fence, which was moved, on the ground of the verdict being against evidence. Rev v. Reynell, 6 East, 315; 2 Smith, 406.

Not granted even for a misdirection, after an acquittal on an indictment for a misdemeanor. Rex v. Cohen, 1 Stark, 516—Ellenborough.

According to the common law there is no power to grant a new trial in a case of felony. Reg. v. Bertrand, 1 L. R., P. C. 520; 31 L. J., P. C. 51; 16 W. R. 9; 16 L. T., N. S. 752; S. P., Reg. v. Murphy, 38 L. J., P. C. 53; 2 L. R., P. C. 535; 17 W. R. 1047; 21 L. T., N. S. 598.

The 17 & 18 Vict. c. 125, s. 35, C. L. P. Act, 1854, which gives an appeal on motions for new trials does not apply to indictments. Reg. v. Stephens, 7 B. & S. 710.

Venire de Novo.]—In a charge of felony where the indictment is good and the prisoner has been given in charge to a jury in due form of law impanueled, chosen and sworn, and a verdict has been returned and judgment given, the proceedings are final, and a venire de novo will not lie. Reg. v. Murphy, 38 L. J., P. C. 53; 17 W. R. 1047; 2 L. R., P. C. 535; 21 L. T., N. S. 598.

Grounds.]—If all the jury was not present when the verdict of guilty was delivered against a defendant for the publication of a libel, and it is uncertain whether they all heard such verdict pronounced by the foreman, the court will, with the consent of the defendant, grant a new trial. Rex v. Wooller, 2 Stark, 111—Abbott.

Upon the trial of an information for a libel by a special jury, only ten jurymen appeared, and two talesmen were sworn to make up the jury: it is no ground for a new trial, that two of the non-attending special jurymen named in the panel had not been summoned, though it

appeared that this fact was unknown to the defendant until after the trial. Rev v. Hunt, 4 B. & A. 430.

After a special jury had been sworn on the trial of an indictment for a misdemeanor, it was discovered that one of them had sat on the grand jury who found the bill. It was proposed that he should leave the box, but the defendants objected to this course: the trial proceeded, and they were found guilty. Under these circumstances, the court refused to grant a rule for a new trial on the ground of mistrial. Reg. v. Sullivan, 1 P. & D. 96; 8 A. & El. 831.

Where, on the trial of an indictment for perjury, it was necessary to swear talesmen from the common jury pauel, and one J. Williams being called, his son R. H. Williams (at the request of his father, and without collusion), appeared for him, and was sworn and served on the jury, he not being of age, neither having a qualification, not being on the panel:—Held, that there was a mistrial, and a rule obtained for a new trial was made absolute. Rex v. Tremaine, 7 D. & R. 684; 5 B. & C. 254.

Where, in an indictment not charging an offence for which the defendant, if guilty, might suffer fine and imprisonment, a civil right comes in question, and the right would be bound by the verdict, a new trial may be granted after a verdict for defendant. By Lord Campbell, C. J., and Crompton, J. Reg. v. Russell, 3 El. & Bl. 942; 18 Jur. 1022; 23 L. J., M. C. 173. See Reg. v. Botfield, 1 Jur., N. S. 594, n.—Q. B.

But by Coleridge, J., wherever the substance of a criminal proceeding is civil, a new trial may be granted after a verdict for the defendant, on the ground either of misdirection, or of the verdict being against the evidence. Ib.

Held, accordingly, by Lord Camp-

bell, C. J., and Crompton, J. (Coleridge, J., dissenting), that where an indictment charged the defendant with erecting an obstruction to the navigation of the Menai Straits, and the right to an oyster fishery was in question, the court ought not to grant a new trial after verdict for the defendant. Ib.

A new trial will not be granted, after an acquittal upon an indictment for obstructing a highway, on the ground that the verdict is against the evidence. Reg. v. Johnson, 6 Jur., N. S. 553; 29 L. J., M. C. 133; 8 W. R. 236—Q. B.

But a new trial will be granted on an indictment for a misdemeanor on the ground of surprise, as in civil cases. Reg. v. Whitehouse, Dears. C. C. 1.

Defendants entitled to.]—Where several defendants are tried at the same time for a misdemeanor, and some are acquitted and some convicted, the court may grant a new trial as to those convicted, if they think the conviction improper. Rex v. Mawbey, 6 T. R. 619.

Where all of several defendants in an indictment for conspiracy are found guilty, if one of them shews himself entitled to a new trial, on grounds not affecting the others, the new trial will nevertheless be granted. Reg. v. Gompertz, 9 Q. B. 824; 16 L. J., Q. B. 121.

Practice on—Time to move.]—A defendant, convicted on a criminal prosecution, cannot move for a new trial after the first four days of the next term; though, if it appears to the court at any time before judgment, that injustice has been done by the verdict, they will interpose and grant a new trial. Rex v. Holt, 5 T. R. 436.

A motion for a new trial on behalf of a defendant in an indictment, must be made within the first four days of term, though the ar-

gument will be postponed till he is brought up for judgment. Reg. v. Hetherington, 5 Jur. 529—Q. B.

Where a new trial is to be moved for by a defendant in a criminal case, intimation must be given to the court during the first four days of term that the party is prepared to move. Reg. v. Newman, 1 El. & Bl. 268; Dears. C. C. 85; 17 Jur. 617; 22 L. J., Q. B. 156.

Affidavits.]—Affidavits of new facts are not in general admissible in criminal cases, on a motion for a new trial, unless there was some surprise on the defendant at the trial; but affidavits of the death of a person may be received to account for his not having been examined as a witness. Rew v. Bowditch, 2 Chit. 278.

Personal Attendance.]—All the defendants convicted upon an indictment for a conspiracy must be present in court when a motion for a new trial is made on behalf of any of them. Rex v. Teal, 11 East, 307; S. P., Rex v. Askew, 3 M. & S. 9; Rex v. Cochrane (Lord), 3 M. & S. 10, n.

Where a defendant convicted of a misdemeanor at the assizes was committed to the county gaol to abide the judgment of the court, and was detained for no other cause; on a suggestion of his inability to pay the expense of bringing himself up, the court allowed a motion for a new trial to be made without his personal attendance. Rex v. Boltz, 8 D. & R. 65.

It seems that the consent of the counsel for the prosecution cannot dispense with the rule which requires the presence of defendants convicted upon a criminal proceeding, during a motion for a new trial. Rew v. Fielder, 2 D. & R. 46.

A defendant in the actual custody of the marshal upon criminal process, in consequence of an indictment in the King's Bench, need not

be present when a motion for a new trial is made on his behalf. Rex v. Hollingberry, 6 D & R. 345; 4 B. & C. 329.

A defendant sentenced to transportation cannot move for a new trial without appearing in court, though the sentence has been passed at the assizes under 11 Geo. 4 & 1 Will. 4, c. 70, s. 9. Reg. v. Caudwell, 17 Q. B. 503; 2 Den. C. C. 372, n.; 15 Jur. 1011; 21 L. J., M. C. 48.

Semble, that where there are several defendants, all need not be present in court in order to entitle one or more of such defendants to move for a new trial. *Ib.* 

In moving for a new trial where the defendant has been found guilty of a nuisance in obstructing a public sewer, and where he is liable not to personal punishment but to a fine, it is not necessary that he should be present in court. Reg. v. Parkinson, 2 Den. C. C. 459; 15 Jur. 1011.

Costs.]—The rule as to payment of costs on a motion for a new trial is the same in principle in civil and criminal cases. Rex v. Ford, 1 N. & M. 776.

Where a new trial, on an indictment removed into the Queen's Bench by certiorari at the instance of the defendant, is ordered on the ground of surprise, the court may, in its discretion, order the costs to await the event of the new trial. Reg. v. Whitehouse, Dears. C. C. 1.

## XLIX. JUDGMENT AND SENTENCE.

- Form and Entry generally, 585.
- 2. At Nisi Prius, 588.
- 3. Bringing up before Court of Queen's Bench, 589.
- Arrest of, 590.
   Reversal, 590.

As to Murder, see page 382.

1. Form and Entry generally.

The record at the quarter sessions, after stating that the defendants were indicted for stealing oats, to which they pleaded not guilty, and a verdict of guilty thereon, added, "that because it appeared to the justices, that, after the jury had retired, one of them had separated from the other jurors, and conversed respecting his verdict with a stranger, it was considered that the verdict was bad," and it was therefore quashed, and a venire de novo awarded to the next sessions; and it then proceeded to set out the appearance of the parties at such sessions, and the trial and conviction by the second jury, "whereupon all and singular the premises being seen and considered, judgment was given ":-Held, on a writ of error, that such judgment was right. Rex v. Fowler, 4 B. & A. 273.

A witness being indicted for perjury is not a reason for postponing judgment against the person con-Rex v. Haydon, 1 W. Bl. victed.

404; 3 Burr. 1387.

Indictment against A., B., C. and D. for a conspiracy, charging that they conspired together, with divers other persons unknown. A. and B. A. was found not guilwere tried. ty, and B. was found guilty of conspiring with C. C. had pleaded before the trial of A. and B., but neither he nor D. appeared to take On motion to arrest their trials. the judgment against B., or suspend it till C. be tried:—Held, that the verdict was conclusive against B. as a general verdict of guilty, and that judgment might be given against him without reference to what the verdict might be on the trial of C. Rex v. Cooke, 7 D. & R. 673; 5 B. & C. 538.

A judgment of imprisonment against a defendant to commence in futuro, i. e. from and after the determination of an imprisonment to which he was before sentenced for judgment may be given against the

another offence, is good in law. Wilkes v. Rex (in error), 4 Bro. P. C. 367.

It is not the practice of any court of criminal jurisdiction to make the day upon which execution of any corporal punishment is to be done a part of the original sentence. The time of inflicting such punishment is usually left either to the discretion of the officer to whom the execution of the sentence belongs, or is appointed by a particular rule of the court (or statute 27 & 28 Vict. c. 44), which awards the punishment. Atkinson v. Rex (in error), 3 Bro. P. C. 517.

Where a fixed fine by statute for a misdemeanor is miscalculated in the verdict and the judgment, the court, upon a rule served on all parties interested, will alter the rule for judgment against the prisoner, and the entry roll as to so much of the punishment, but they will not alter the judgment and verdict. Rex v. Stevens, 3 Smith, 366.

A sentence of corporal punishment cannot be pronounced upon a person in his absence. Rea v. Hann, 3 Burr. 1786; S. P., Anon., Lofft,

Ageneral judgment for the crown, on an indictment containing several counts, one of which is bad, and where the punishment is not fixed by law, cannot be supported. O'Connell v. Reg. (in error), 11 C. & F. 155; 9 Jur. 25.

An indictment contained four counts for extortion, and three counts for uttering forged licences. jury having returned a verdict of guilty upon all the counts, the court passed sentence of the same identical term of imprisonment upon each count separately. Reg. v. Carter, 9 Jur. 178—Q. B.

Two persons charged on indictment with a joint felony, ought not to be sentenced thereon on proof of two distinct felonies. If a verdict of guilty is given against both,

party who is proved to have committed the first felony in order of Reg. v. Gray, 2 Den. C. C. time. 87; T. & M. 411.

It is not necessary, in recording sentence, to refer to the statute which gives the punishment. Murray v. Reg. (in error), 7 Q. B. 700; 9 Jur. 596; 14 L. J., Q. B. 357.

An indictment at quarter sessions charged prisoners, in a first count, with stealing in the dwelling-house of A, the goods of A, above the value of 51.; in the second count, with simple larceny of monies and goods (not "other" goods, &c.,) of A., describing them precisely as in the first count, and not using the word "afterwards." Not guilty. Jury process to try whether the prisoners are guilty of the felony aforesaid. Verdict, that the prisoners are guilty of the felony afore-Judgment, that they respectsaid. ively be transported for ten years: —Held, that an indictment for felony containing several counts is bad in arrest of judgment, and on error, for duplicity, if it necessarily appears that two or more of the counts are for the same offence; but that this did not necessarily appear on the present indictment. Campbell v. Reg. (in error), 11 Q. B. 799; 2 New Sess. Cas. 297; 10 Jur. 329; 15 L. J., M. C. 76; 2 Cox, C. C. 463.

Held, secondly, that the word "felony" was not nomen collectivum, meaning felony generally, but pointed to one particular charge of felony. Ib. See Ryalls v. Reg. (in

error), 11 Q. B. 781.

Held, thirdly, that the verdict was bad for uncertainty, in not specifying the offence of which it found the prisoners guilty.

Held, fourthly, that the judgment was erroneous, the court not being at liberty to apply it to the first count only. Ib.

On error in the Exchequer Chamber:—Held, that whether or not

as nomen collectivum in the judgment at sessions, it could mean in the jury process one offence only, and therefore the process was here judgment misawarded, and the could not be sustained.

Under 7 Will. 4 & 1 Vict. c. 90, s. 1, by which any person convicted of the offence of breaking and entering a dwelling-house, and stealing therein, shall be liable to be transported beyond the seas for any term not exceeding fifteen years, nor less than ten years, there was no power to pass sentence of transportation for less than ten years. Whitehead v. Reg. (in error), 7 Q. B. 582; 9 Jur. 594; 14 L. J., M. C. 165.

On an indictment for libel, the defendant suffered judgment by retraxit. The record of the judgment stated that the prosecutor and the defendant came, &c., and the defendant "withdrew his plea by him pleaded, whereby our lady the Queen remaineth against him without defence in his behalf, whereupon" it was adjudged that he be convicted :-Held, sufficient ground for a judgment, though it was not expressly alleged that the defendant confessed the indictment. Gregory v. Reg. (in error), 15 Q. B. 957; 15 Jur. 79; 19 L. J., Q. B. 367—Exch. Cham.

The judgment, as entered on the record, being that, for the offences charged in each and every count of the indictment, the defendant be imprisoned in the Queen's prison for six months now next ensuing:-Semble, that the judgment was, in form, a sentence of one term of six months' imprisonment upon whole indictment, and would, therefore, be erroneous if any count was Ib.bad.

To the judgment of imprisonment was added, "and that he" (defendant) "be placed in the first division of the fourth class of prisoners in the Queen's prison": the word "felony" was to be taken | Semble, that, if this direction was not warranted by an order of the secretary of state, under 5 & 6 Vict. c. 22, it did not vitiate the judgment.

Held, by the Queen's Bench, that such direction, when warranted, is no part of the judgment of the court, but a mere order. Ib.

On an objection to the entry of a judgment, on the ground that it was a general judgment upon all the counts, and one of them was bad, the court ordered the case to stand over to allow the prosecutor to apply to the court below to amend. 1b.

If one count in an indictment removed from the quarter sessions to the Queen's Bench by writ of error is good, the court may, under 11 & 12 Vict. c. 78, s. 5, pronounce judgment, or direct the sessions to pronounce it, on the good count. Holloway v. Reg. (in error), 17 Q. B. 319; 2 Den. C. C. 287; 15 Jur. 825.

The record of the proceedings in the Queen's Bench upon an indictment, containing several counts for perjury, after regularly setting forth all the proceedings, down to the finding of a verdict of guilty and the prayer of judgment, went on to state that "because it appears to the court here, that the verdict so given against O. W. K. was unduly given; therefore, the verdict is by the court here vacated and made void; and all other process ceasing against the jury before impanneled, the sheriff is commanded so that he cause a jury anew thereupon to come, &c., by whom the truth of the matter may be better known." And then, after regularly carrying down the further proceedings to the finding of a second verdict of guilty, and a second prayer of judgment, it concluded thus: "It is considered and adjudged and ordered that O. W. K., for the offence charged upon him in and by each and every count of the indictment, be imprisoned in the Queen's prison for the space of sentence were affirmed; but the

eight calendar months":—Held, that the record in terms contained a sufficient entry of the award of a new trial, it appearing that the form adopted was the same as the precedents used and approved of, and that the entry of the final judgment and sentence was sufficiently certain. King v. Reg. (in error), 13 Jur. 742; 18 L. J., Q.B. 253—Exch. Cham.

The written list of sentences passed upon the prisoners given to the gaoler by the clerk of the assize, and which is his only authority for their detention, is not evidence that they are in legal custody on an indictment for assaulting the turnkey in the execution of his duty. Reg. v. Bourdon, 2 Cox, C. C. 169 —Maule.

An indictment contained three counts; first, a count stating a previous conviction, and a subsequent larceny; secondly, a count for larceny; thirdly, a count for receiving stolen goods. When the prisoner was arraigned, so much only of the first count as charged the subsequent felony was read to him, and he pleaded guilty thereto. He also pleaded guilty to the second count. Then so much of the first count was read as stated the previous conviction, and the prisoner pleaded guilty thereto. He was then sentenced to five years' penal servitude on the second count: a nolle prosequi was entered on the third, and nothing These facts was done on the first. appeared on the record. The crown having brought the record upon writ of error for the purpose of having the sentence increased to seven years' penal servitude, under 27 & 28 Vict. c. 47, s. 2:—Held, that the first count was bad, and no sentence could be entered upon it; that, the second count being good, the sentence properly entered upon it was not affected by the first count; and, the crown entering a nolle prosequi on the first count, the judgment and court recommended that, under the circumstances, the executive should discharge the prisoner after two years' imprisonment. Reg. v O'-Brien, 1 Ir. R., C. L. 166—Q. B.

A prisoner had been convicted on an indictment charging a previous conviction and subsequent felony under 24 & 25 Vict. c. 96, s. 116, and sentenced by mistake to five years' penal servitude, seven years being the minimum under the statute. Upon a writ of error, by the crown, for the purpose of reversing the judgment and passing the proper sentence, it appeared from the record that the provisions of the statute, as to arraigning the prisoner, had been neglected: Held, that these provisions were material, and the conviction was Reg. v. Fox, 10 Cox, C. quashed. C. 502; 15 W. R. 106—Ir. Q. B.

A. was convicted of the misdemeanor of having done grievous bodily harm to B. The indictment did not charge a previous conviction of felony; but after the jury had found him guilty, it was proved on oath that he had been previously convicted of felony, but no record certificate of such conviction was produced. He was sentenced to penal servitude for five years, as for a misdemeanor only, without any previous conviction of felony: Held, that the sentence was correct under 27 & 28 Vict. c. 47, s. 2. Reg. v. Summers, 1 L. R., C. C. 182; 38 L. J., M. C. 62; 17 W. R. 384; 11 Cox, C. C. 248. See Reg. v. Garland, 11 Cox, C. C. 224.

#### 2. At Nisi Prius.

By 11 Geo. 4 & 1 Will. 4, c. 70, s. 9, upon trials for felony or misdemeanor on a K. B. Record, judgment may be pronounced at the assizes, and shall have the effect of a judgment in the court above, unless the court in the first six days of term grant a rule nisi for a new trial or for amending the judgment.

A defendant on such record having

been sentenced at the assizes, cannot apply to the court to amend the judgment by diminishing the punishment upon ordinary affidavits in mitigation, or without shewing some specific defect in the sentence, or some matter which could not have been adduced at the assizes. Rex v. Lloyd, 4 B. & Ad. 135.

Where judgment on a record of the Queen's Bench is pronounced at the assizes under 11 Geo. 4 & 1 Will. 4 c. 70, s. 9, the court may, if they see fit, amend the judgment by ordering it to be arrested. *Reg.* v. *Nott*, 4 Q. B. 768; D. & M. 1; 7 Jur. 621; 12 L. J., M. C. 143.

Where a verdict has been given for the crown in such trial, and the defendant desires to have judgment pronounced at the assizes, it is the proper course for his counsel to state at the same time, that he intends to avail himself of the provision of section 9, by moving the court for a new trial on the ground of misdirection, or in arrest of judgment. Ib.

A sentence of imprisonment passed at Nisi Prius, the defendant not being present, may declare that the imprisonment shall commence on the day on which he shall be taken to and confined in prison. King v. Reg. (in error), 7 Q. B. 782; 9 Jur. 833; 14 L. J., M. C. 172—Exch. Cham.

Upon the trial of an indictment at Nisi Prius, judgment was pronounced by the judge, under 11 Geo. 4 & 1 Will. 4, c. 70, s. 9; but a rule nisi, to arrest the judgment, was afterwards granted by the court of Queen's Bench, within the first six days of term, and subsequently discharged. Upon writ of error brought, the record was made up without any notice of such rule:—Held, that the judgment could not be impeached upon the ground of such rule having been Dunn v. Reg. (in error), granted, 12 Q. B. 1026; 13 Jur. 233; 18 L. J., M. C. 41; 3 Cox, C. C. 205—

Au indictment for felony had | been removed from the quarter sessions, and tried at Nisi Prius. The prisoners were convicted, and the court of Queen's Bench ordered Neither side brought a new trial. down the record, but the prisoners applied to be tried there; this could not be done, as the record had not been brought down. A procedendo issued, and the prisoners were tried at the quarter sessions, and convicted. Reg. v. Scaife, 3 C. & K. 211 —Alderson.

## 3. Bringing up for Judgment before Court of Queen's Bench.

The court cannot compel a prosecutor to be at the expense of bringing a defendant in custody up to receive judgment for a misdemeanor; but if the defendant is too poor to come up at his own expense, they will pass judgment in his absence. Rex v. Boltz, 8 D. & R. 65; 5 B. & C. 334.

Where a defendant, convicted upon an indictment for a libel, was committed to prison at the instance of the prosecutor, who would not afterwards bring him up for judgment, the court, at the prayer of the defendant, passed judgment in his absence. Ib.

When a defendant is brought up for judgment, after verdict, the defendant's affidavits will be first read, and then those for the prosecution; after which the defendant's counsel will be heard, and lastly, the counsel for the prosecution. Rex v. Bunts, 2 T. R. 683.

But where a defendant is brought up for sentence, after judgment by default, the prosecutor's affidavits will be first read, then the defendant's; after which the counsel for the prosecution will be heard, and lastly, the counsel for the defend-

Where, upon a trial of an indictment for libel, one of the defendants pleaded guilty, and entered into recognizances to appear and receive | though the record has been removed

judgment, with a condition that if he ceased to publish libels he should not be called up; the court will not pass judgment unless the prosecutor produces an affidavit that he has published a libel since the trial. Reg. v. Richardson, 4 Jur. 104; 8 D. P. C. 511.

Where several defendants are brought up for sentence, some after judgment by default and others after verdict, the counsel for all must first be heard in mitigation, and then the counsel for the crown in aggravation. Rex v. Despard, 2. M. & R. 406.

Where a defendant, having pleadindictment, is ed guilty to an brought up for judgment, the counsel for the crown is to be heard before the counsel for the defendant; and the affidavits in aggravation are to be read before the affidavits in mitigation. Reg. v. Dignam, 7 A. & E. 593.

Contra, where a verdict of guilty has been taken, though by consent, and without evidence. Ib.

Semble, that the rule is not to be varied where several defendants are jointly indicted, and some suffer judgment by default and others are convicted on verdict; and in such case where there was no affidavit in aggravation, but affidavits were offered in mitigation, the court heard the counsel for the defendants first. See Rex v. Sutton, 7 A. & E. 592, n.

When a defendant is brought up for judgment his acts subsequent to the trial may be considered either by way of aggravating or mitigating the punishment, even though they are separate and distinct offences, for which he may be afterwards But in such cases the court will take care not to inflict a greater punishment than the principal charge itself will warrant. Rex v. Withers, 3 T. R. 428.

Affidavits are not admissible in aggravation in a case of felony, al-

by certiorari. Rex v. Ellis, 9 D. & R. 174; 6 B. & C. 145.

A justice convicted of a misdemeanor in his office must attend in person to receive the judgment of the court; but upon an affidavit of age and infirmity the court will dispense with his personal attendance. Rex v. Constable, 7 D. & R. 663; 3 B. & Ad. 659, n.

A defendant being brought up for judgment for an assault, and it appearing that the prosecutor had commenced an action, which was still depending for the same assault: the court refused to pass any judgment, except that the defendant should give security for his good behaviour, he having used violent language towards the prosecutor in addressing the court; and this, although, at the time of the defendant being brought up, the prosecutor offered to discontinue the action. Rex v. O' Gorman Mahon, 4 A. & E. 575.

## 4. Arrest of.

If a defendant would move in arrest of judgment after conviction for a misdemeanor, he must be present in court. Rex v. Spragg, 2 Burr. 928.

#### 5. Reversal.

By 11 & 12 Vict. c. 78, s. 5, "whenever any writ of error shall "be brought on any judgment in "any indictment, information, pre-"sentment or inquisition in any " criminal case, and the court of er-"ror shall reverse the judgment, it "shall be competent for such court " of error either to pronounce the " proper judgment or to remit the "record to the court below, in or-"der that such court may pronounce "the proper judgment upon such "indictment, information, present-"ment or inquisition."

Where a person has been erroneously sentenced at quarter sessions to imprisonment and hard labour, ment in error, has no alternative but to discharge the prisoner. versides v. Reg., 2 G. & D. 617; 3 Q. B. 406; 6 Jur. 805.

Upon a reversal of the judgment, the court has no power to order that the plaintiff in error should be discharged. King v. Reg. (in error), 7 Q. B. 782; 9 Jur. 833; 14 L. J., M. C. 172—Exch. Cham.

Where a judgment of imprisonment was reversed upon error, the court granted a rule, directing that the plaintiff in error should be discharged out of the custody of the keeper of the Queen's prison, where he had been kept by virtue of his commitment. Holt v. Reg. (in error), 2 D. & L. 774; 9 Jur. 538; 14 L. J., Q. B. 98—B. C.—Wight-

By 8 & 9 Vict. c. 68, "execution " of judgment upon prosecutions "for misdemeanors, while a writ of "error is pending to reverse the "judgment, may be stayed upon "giving bail."

#### L. Error and Appeal.

1. Error, 590.

When an Appeal lies, 594.
 Court of Criminal Appeal, 594.

4. Rules and Practice, 595.

#### 1. Error.

Grounds.]—After judgment the record can only be removed by a writ of error. Rex v. Seton, 7 T. R. 373; S. P., Rex v. W. R. Yorkshire (Justices), 7 T. R. 467.

A return to a writ of error, directed to the commissioners of over and terminer of the city of London, set out the record of an indictment found against the defendant before the lord mayor and others, and stated that he was tried upon the indictment by a jury of the country at the next session holden before the lord mayor and several of the judges, aldermen, recorder and the court, after reversing the judg-lothers, assigned by certain letters

patent under the great seal directed | to them, or any two or more of them, to inquire of certain offences; and that he was, by the verdict of such jury, found guilty; and that thereunto judgment was given by the court against him. Upon this return the defendant assigned, as errors in law, that the judgment was insufficient, and should have been for the defendant: and, as errors in fact, first, that, when the jury gave their verdict there was but one of the justices named in the commission present in court: and, secondly, that the verdict was not at the time it was so given entered of record. The king's coroner and attorney answered, in nullo est erratum, and prayed that the judgment might be affirmed:—Held, as to the first error in fact, that, as it appeared by the record that the verdict was given at a session holden before several of the commissioners and justices, the plaintiff in error could not be allowed to aver, in contradiction of the record, that only one of the justices was present when the jury gave their verdict, and the answer in nullo est erratum is no admission of the fact assigned for error, unless it could lawfully be assigned, and is well assigned in point of form: Held, also, that the second error in fact assigned was no error, inasmuch as it was impossible that a verdict should be recorded at the time when it was given, the recording of it being necessarily an act subsequent to the delivery of the verdict by a jury. Rex v. Carlile, 2 B. & Ad. 362; 4 C. & P. 415.

Error was brought upon a judgment at the Old Bailey, and one ground assigned was that a material fact stated on the record was not The court held such an averment inadmissible, and affirmed the judgment. The fact being as alleged by the defendant below, the court of over and terminer afterwards ordered the record to be writ of error, and assigned errors

amended, and their clerk, by a rule of the court of K. B., came into the latter court and made the amendment there. Upon motion afterwards that the case might be again set down for argument :-Held, that the court of K. B. could not re-hear it, after the expiration of the term in which judgment was given, though the attorney-general. consented, and that the only remedy was by writ of error to the House of Lords. Rex v. Carlile, 2 B. & Ad. 971.

Upon a writ of error on an indictment for felony, the judgment must be reversed, if an erroneous punishment is awarded. Bourne v. Rex (in error), 2 N. & P. 248; 7 A. & E. 58; 1 Jur. 542.

Where the court appears by the indictment to have had jurisdiction over the offence, it cannot be assigned as ground of error that the offence was committed out of the jurisdiction of the court. Reg. v. Newton, 1 Jur., N. S. 591; 24 L. J., Q. B. 246; 4 El. & Bl. 869; S. P. and S. C., 16 C. B. 97.

When an indictment contains several counts, it is not ground of error that no verdict has been given on some of them, provided a verdict has been found on one good count, and judgment given accordingly. Latham v. Reg. (in error), 5 B. &

A writ of error was sued out by a person convicted of a misdemeanor in the Queen's Bench, and judgment of reversal for non-joinder in error was entered up in the Exchequer Chamber. Subsequently the Queen's Bench, by rule, quashed the writ as having been improperly issued for the purpose of effecting a The writ, assignment compromise. of errors, and judgment of reversal remained upon the judgment roll and transcript, and below them an entry was made of the rule of the court, quashing the writ of error. The prisoner sued out a fresh

both in the indictment and in the The rule of the Queen's Bench. prosecutor obtained a rule nisi in the Exchequer Chamber to expunge the entry of the judgment: Held, that the court of Queen's Bench having, in the exercise of its equitable jurisdiction, quashed the first writ of error for matter dehors the record, that the writ and the judgment under it were both void and gone, and ought not to remain on the record; that the rule of the Queen's Bench being for matter dehors the writ was not examinable in error, and ought not to appear on the record; and that the rule to expunge the judgment might be made absolute in its terms, as the writ of error, on which it was founded, was absolutely avoided: aliter if the writ of error had been merely voidable, in which case the rule would have been misconceived as not embracing it. Alleyne v. Reg. (in error), 5 El. & Bl. 399; Dears. C. C. 505; 1 Jur., N. S. 869; 24
 L. J., Q. B. 282—Exch. Cham.

The granting of a writ of error is part of the prerogatives of the If, therefore, the attorneycrown. general of England, or the lord lieutenant of Ireland, refuses to grant it, the lord chancellor has no jurisdiction to review that decision. Pigott, In re, 19 L. T., N. S. 114—

Ir. Ch.

 $Previous\ Fiat\ of\ Attorney\ -\ General.$ -It is in the discretion of the attorney-general to grant his fiat for a writ of error for a misdemeanor, and therefore, if he has exercised his discretion by refusing to grant his fiat, the court will not order him to grant it. Reg. v. Newton, 4 El. & Bl. 869; 1 Jur., N. S. 591; 24 L. J., Q. B. 246; S. P. and S. C., nom. Newton, In re, 16 C. B. 97.

Where, in a colony, a person has been convicted of a criminal offence, and is in execution of a sentence the record of conviction, unless the attorney-general has first issued his fiat for a writ of error. Nor will a certiorari be granted in general to remove a record under such circumstances in order that a writ of error may afterwards be brought. will a habeas corpus be granted under such circumstances to bring up the prisoner. Reg. v. Lees, 27 L. J., Q. B. 403; El., Bl. & El. 828.

16 & 17 Vict. c. 32, "imposes " terms and conditions for bringing " writs of error upon judgments for

" misdemeanors."

Practice on. —The court dispensed with the attendance of a plaintiff in error, to crave over of the record of an indictment for bigamy, for the purpose of assigning errors, where it appeared that he was a resident in Australia, where he had been for the last thirty years; that he was sixty-six years of age, and subject to paralytic attacks, and that he could not make the journey to this country without injury to his health, and without considerable pecuniary loss. *Murray* v. *Reg.* (in error), 3 D. & L. 100; 7 Q. B. 700; 9 Jur. 410; 14 L. J., Q. B. 357.

Where the prosecutor and his attorney were both dead, the court directed service of the rule to join in error to be made, by sticking it up in the crown-office, and serving a copy on the solicitor to the Treasury. *Ib.*—B. C.—Coleridge.

Quære, whether a writ of error in felony can be sued out in formâ pauperis? Reg. v. Stokes, 3 C. & K.

 $\bar{1}89.$ 

Upon a motion by a plaintiff in error under 16 & 17 Vict. c. 32, s. 3, for reversal of judgment upon an indictment for a misdemeanor, he must be personally present in court. Howard v. Reg. (in error), 10 Cox, C. C. 54; 13 W. R. 316; 11 L. T., N. S. 629—Q. B.

The rule is nisi only, and should passed for that offence, no writ of be served on the officer of the court error will be granted to bring up from which error is brought, and not on the prosecutor or his attorney.

Form of the præcipe and petition with the secretary of state's flat necessary when a writ of error in a criminal case to the House of Lords is sued out. Reg. v. Lavey, 2 Den. C. C. 512, n.

One of two persons convicted of conspiracy may bring error on the judgment of conviction without the other. Wright v. Reg. (in error), 14 Q. B. 148; 11 Jur. 103; 16 L.

J., Q. B. 10.

Upon a motion to quash a writ of error, under s. 5 of 8 & 9 Vict. c. 68, it is not necessary that the defendants should have been previously ruled to assign errors. Reg. v. Broome, 2 B. C. Rep. 259; 5 D. & L. 607; 12 Jur. 838; 17 L. J., Q.

B. 208—Coleridge.

Where judgment of non pros. has been signed by the defendant in error, in an indictment for a misdemeanor, because the plaintiff in error has not assigned errors in proper time, the defendant in error has a right to enter the proceedings and judgment of non pros. upon the judgment roll in the court below. Reg. v. King, 9 Jur. 551; 14 L. J., Q. B. 86.

Writ of error to reverse a judgment of outlawry of the plaintiff for not appearing to receive judgment upon an indictment on which he had been convicted by his own confession, and which had been removed into the Queen's Bench by certio-Errors were assigned in the process of outlawry, and that the outlawry was founded on the judgment of conviction of the matters in the indictment, whereas certain of the counts were bad. Joinder in error, that neither in the outlawry nor in the pronouncing of the judgment of conviction is there error. Upon application on behalf of the prosecutor, that the outlawry, which was admitted to be bad, should be reversed, and that the plaintiff in error should be brought up for judg- | civil cases, do not apply; but the

ment:—Held, that the court could only reverse the outlawry, and could not entertain the question of error in the record of conviction. Wright v. Reg. (in error), 14 Q. B. 148; 11 Jur. 103; 16 L. J., Q. B.

Where a writ of error issued on the application of a defendant to bring up a transcript of the record and proceedings on an indictment for perjury, with all things touching the same, and the writ was returned, and the plaintiff in error assigned errors, he could not afterwards object that the proceedings on a rule to arrest judgment, which had been discussed in the court below, were not mentioned in the return. Reg. v. *Dunn*, (in error), 12 Q. B. 1026; 18 L. J., M. C. 41—Exch. Cham.

Where a writ of error is sued out upon a judgment of the Queen's Bench in a criminal prosecution, for the purpose of enabling the parties to effect a compromise of such prosecution, that court has the power, under the 12 & 13 Vict. c. 109, s. 39, to set aside such writ of error, and will exercise that power. v. Alleyne, Dears. C. C. 505; 4 El. & Bl. 186; 1 Jur., N. S. 373.

After the writ of error has been so set aside by the Queen's Bench, the court of Exchequer Chamber will set aside a judgment, signed thereon by order of a judge, for want of a joinder in error. Alleyne v. Reg. (in error), Dears. C. C. 505; 1 Jur., N. S. 869; 24 L. J., Q. B. 282—Exch. Cham.

When error is brought on a judgment for felony, and the crown does not join in error, the defendant will be discharged. Rex v. Howes, 7 A. & E. 60, n.; 3 N. & M. 462.

So in error upon a conviction for a misdemeanor. *Ib*.

Where error is brought by a person convicted of felony, from the Queen's Bench to the Exchequer Chamber, the general rules for governing the proceedings in error, in

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prisoner must be brought up to the court, to pray over of the record, and to assign errors by delivering them in writing to the officer of the court, and must be present during the argument and the giving judgment. The counsel representing the attorney-general for the crown may, if he pleases, orally join in error, immediately on the assignment of errors being delivered in. Mansell v. Reg. (in error), 8 El. & Bl. 54; Dears. & B. C. C. 375; 4 Jur., N. S. 432; 27 L. J., M. C. 4—Exch. Cham.

Recognizances to Prosecute.]—It is ordered that there be laid before the court of Queen's Bench, on the first crown paper day in every term, a list of the several cases in which recognizances have been filed to prosecute writs of error in misdemeanor returnable in that court, together with the names of the several cases in which default has been made in prosecuting such writs of error, according to the course and practice of that court. Reg. Gen., Q. B., E. T. 16 Vict., 16 April., 1853; 1 El. & Bl. 693.

A prisoner in custody, under a sentence of imprisonment for two years on a conviction for a misdemeanor, was discharged on bringing a writ of error and entering into a recognizance to prosecute the writ with effect. No notice was given to the prosecutor, nor was the recognizance duly filed in the crown office. He was therefore ordered to be recommitted. The judge's warrant, under which he was retaken, directed his apprehension and recommittal, stating it to be "in execution of the judgment in the prosecution ":-Held, that the warrant was good, and that it was not necessary to state on the face of it how long the renewed imprisonment was to continue. Dugdale v. Reg. (in error), 3 C. L. R. 74; 24 L. J., M. C. 55—B. C.—Crompton.

A defendant, being convicted and

sentenced to imprisonment, at the sessions, for misdemeanor, brought error in the Queen's Bench, and afterwards in the Exchequer Cham-In the latter court he entered into a recognizance, conditioned, in case of the affirmance of the judgment, to surrender himself personally, to be dealt with "as our Court of Exchequer Chamber may order." This recognizance was filed in the Queen's Bench. The defendant was discharged out of custody by a judge at chambers. On motion in the Queen's Bench to apprehend and recommit him :-Held, that the recognizance was before the court, although not appearing in the affidavits; and that the recognizance was not in conformity with 8 & 9 Vict. c. 68, s. 1, and that the rule must be made absolute. Dugdale v. Reg. (in error), Dears. C. C. 254; 2 El. & Bl. 129; 17 Jur. 1097.

Paper Books.]—A defendant in error not having delivered paper books to two of the judges, in pursuance of rule 23 of the regulations in the crown-office, and which rule concludes by saying that "judgment shall be given by the court against the party neglecting to deliver paper books to the judges, if the court shall so please." The court nevertheless directed the argument to proceed. Sill v. Reg. (in error), 17 Jur. 208, n.: S. P. 16 L. T., N. S. 494.

## 2. When an Appeal lies.

It is contrary to the policy of the English law that there should be an appeal in cases of felony. *Eduljee Byramjee*, *Ex parte*, 5 Moore, P. C. C. 276; 11 Jur. 855.

## 3. Court of Criminal Appeal.

Reservation of Points of Law.]
—The 11 & 12 Vict. c. 78, gives no jurisdiction to the Court for Crown Cases Reserved, to hear a case stated from a criminal court on

the sufficiency of an indictment, after judgment on demurrer to the in-Reg. v. Faderman, 4 dictment. New Sess. Cas. 161; T. & M. 286; 2 C. & K. 353; 14 Jur. 377; 19 L. J., M. C. 147.

The court has only jurisdiction after a conviction over what takes

place during the trial. 1b.

A question raised in the court below, in arrest of judgment, is a question arising on the trial, and properly reserved. Reg. v. Martin, 3 New Sess. Cas. 575; 1 Den. C. C. 398; T. & M. 78; 13 Jur. 368; 18 L. J., M. C. 137.

The recorder of a borough has power to reserve questions of law for the consideration of the judges. Reg. v. Masters, 3 New Sess. Cas. 326; 2 C. & K. 930; T. & M. 1; 1 Den. C. C. 332; 12 Jur. 942.

The court is bound to examine the validity of an indictment, though no question is reserved upon it. Reg. v. Webb, T. & M. 23; 1 Den. C. C. 338; 2 C. & K. 933; 13 Jur. 42; 18 L. J., M. C. 39.

 $\mathbf{T}$ he court will only consider questions of law which shall have arisen on the trial of a prisoner. Reg. v. Clark, 1 L. R., C. C. 54; 12 Jur., N. S. 946; 36 L. J., M. C. 16; 15 W. R. 48; 15 L. T., N. S. 190.

Where a man was indicted for a misdemeanor and pleaded guilty, the court declined to consider whether he ought to have been indicted for felony on the same facts.

The 11 & 12 Vict. c. 78, applies to points of law arising upon trials, under special commissions, and authorizes the court to reserve points of law arising at the trial. Reg. v. Bernard, 1 F. & F. 240.

On a charge of murder on the high seas, on board a British ship affoat, the deceased having been thrown out of a foreign ship in a foreign port, the question whether all the facts must not be averred in each count of the indictment, in

an ordinary commission of over and terminer and general gaol delivery jurisdiction to try the offence as it arose on the record, is a point not to be reserved. Reg. v. Menham, 1 F. & F. 369—Pollock.

What a jury says in recommending a prisoner to mercy ought not to be made the subject of a case reserved. Reg. v. Trebilcock, Dears. & B. C. C. 453; 4 Jur., N. S. 123;

27 L. J., M. C. 103.

On a trial for murder, the name of A., a juror on the panel, was called; B., another juror on the same panel, appeared by mistake, answered to the name of A., and was sworn as a juror. The prisoner was convicted. The circumstance that B. had answered for A. was not discovered till the next day, when the judge, being informed of it, reserved the question as to the effect of the mistake on the trial: -Held, that the conviction ought not to be set aside, on the ground that there had been no mistrial, and that the court had no jurisdiction over the case. Reg. v. Mellor, 27 L. J., M. C. 121.

The court cannot entertain questions of mere practice. Reg. v. Stubbs, 1 Jur., N. S. 1115.

Bail on. - Where a case has been reserved upon a conviction for an assault with intent to commit a felony, the court will not deem itself bound to admit the prisoner to bail until the decision of the point reserved, even although the offence is only a misdemeanor, and the prisoner was admitted to bail of right previously to the trial. Reg. v. Bird, 5 Cox, C. C. 11.

### 4. Rules and Practice.

Case. — Where any case shall be transmitted by a court of over and terminer, or gaol delivery, or court of quarter sessions, for the consideration of the court, the original case, signed by the judge or comorder to give a judge sitting under | missioner, or chairman of sessions,

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reserving the question of law, and seventeen copies of such case, one for each judge and one for each party, shall be delivered to the clerk of the court at the Exchequer Chamber, Westminster, at least four days before the day appointed for the sitting of the court. Reg. Gen. T. T. 13 Vict. 1st June, 1850, Exch. Cham.; 1 Den. C. C., App. ix.-xi.; T. & M., App. vii.

Every case transmitted for the consideration of the court is briefly to state the question or questions of law reserved, and such facts only as raise the question or questions submitted; if the question turns upon the indictment, or upon any count thereof, then the case must set forth the indictment, or the particular count. Ib.

No case to be heard upon any de-

murrer to the pleadings. Ib.

Every case to state whether judgment on the conviction was passed or postponed, or the execution of the judgment respited, and whether the person convicted is in prison, or has been discharged on recognizance of bail, to appear and receive judgment, or to render himself in execution. *Ib*.

When any case is intended to be argued by counsel or by the parties, notice thereof to be given to the clerk of the court, at least two days previously to the sitting of the court. Ib.

With every case delivered to the judges of the court (except such cases as shall be reserved by such judges), the fee payable to the clerks of the judges shall not exceed the fee payable on demurrer and other paper books, as contained in the table of fees allowed and sanctioned by the judges, pursuant to 1 Vict. c. 30. Ib.

The court expects cases reserved to be submitted in a complete form, and will ordinarily refuse to send back a case for amendment. Reg. v. Holloway, 1 Den. C. C. 370; 3 New Sess. Cas. 410; T. & M. 40;

13 Jur. 86; 18 L. J., M. C. 60.

Cases are not to be lengthy narratives of the facts. Reg. v. Stear, 13 Jur. 41; 18 L. J., M. C. 30—C. C. R.

The court, for the purpose of assisting its judgment, will look at the indictment, although not set out in the case. Reg. v. Williams, T. & M. 382; 2 Den. C. C. 61; 20 L. J., M. C. 106.

The judges will hear the argument of points reserved, although they appear on the record, and were taken in arrest of judgment. *Reg.* v. *Martin*, 2 C. & K. 950; 3 Cox, C. C. 447; 1 Den. C. C. 398.

If a counsel should think that any material point raised at the trial has been omitted in the statement of the case, it would be proper for him to communicate with the judge who reserved the case, and suggest any amendment that in his judgment may be necessary. Reg. v. Smith, T. & M. 214; 14 Jur. 92.

The court will not consider an objection which has not been reserved, even though it is fairly deducible from the case itself. *Ib*.

The court will not go into any matter of evidence which occurred at the trial, if it is not stated in the case. *Ib*.

Where a case reserved has been restated by order of the court, an application, supported by affidavit, to have it again restated will be refused. Reg. v. Studd, 14 W. R. 806; 14 L. T., N. S. 633—C. C. R.

Signing.]—Where the assizes are held before two judges, and the one of them who tries a criminal case, after reserving a point for the consideration of the Court of Criminal Appeal, dies before the case is stated, the other judge may state and sign the case. Reg. v. Featherstone, Dears. C. C. 369; 18 Jur. 538; 23 L. J., M. C. 127.

v. Holloway, 1 Den. C. C. 370; 3 Amending.]—Where a case re-New Sess. Cas. 410; T. & M. 40; served does not, in the opinion of the counsel who were in it, fairly raise all the points that were in issue, the proper course is to apply to the judge reserving to amend it. Reg. v. Smith, 4 Cox, C. C. 42.

The court will not send a case back for amendment on the mere application of counsel; but will do so if on the argument it appears that it is imperfectly stated. Reg. v. Hilton, Bell, C. C. 20.

But the court will not send back a case to be restated upon an objection which is beside the merits. Reg. v. Brummitt, 8 Cox, C. C. 413; L. & C. 9; 3 L. T., N. S. 679.

Semble, per Cresswell, J., that after verdict the court has no power to amend a count so as to make a jury party to the finding. Reg. v. Harris, Dears. C. C. 344.

Argument and Judgment.]—Where there is a difference of opinion amongst the judges upon a question of law, the case reserved will be argued before the fifteen judges; but where the court differs upon a question of fact only, judgment will be given according to the opinion of the majority that a conviction should be quashed. Reg. v. Burrell, L. & C. 354; 12 W. R. 149; 9 L. T., N. S. 426.

On the argument of a case reserved before the Court of Criminal Appeal, the counsel for the defendant must begin. *Reg.* v. *Gate Fulford*, Dears. & B. C. C. 74.

Counsel will be heard in support of a conviction on a case reserved, though no one appears on behalf of the prisoner. Reg. v. Martin, 1 Den. C. C. 398; 3 New Sess. Cas. 575; T. & M. 78; 13 Jur. 368; 18 L. J., M. C. 137.

A counsel who has appeared for a prisoner at the trial, but has not been instructed to appear for him in the Court of Appeal, may as amicus curiæ cite authorities for the information of the court, but will not be allowed to argue. Reg. v.

Thomas, 12 W. R. 108; 33 L. J., M. C. 22; 9 L. T., N. S. 488.

Costs on.]—The judge who tries a prisoner has power under 7 Geo. 4, c. 64, s. 22, to allow the costs of the prosecution on the hearing of a case reserved for the court for consideration of crown cases; and the officer of that court will tax and ascertain such costs, and certify the amount to the officer of the court below. Reg. v. Lewis, Dears. & B. C. C. 326; 7 Cox, C. C. 406; S. P., Reg. v. Cluderoy, 3 C. & K. 205.

The court which has been directed to pass sentence on a prisoner, after a point reserved for the decision of the Court of Criminal Appeal, has power to allow the costs incurred in the latter court, and upon taxation, under an order to that effect, the briefs and fees of two counsel will be allowed. Reg. v. Woolley, 4 Cox, C. C. 452 — Williams.

The court having no taxing officer, the costs of proceedings in that court must be taxed in the court below. *Reg.* v. *Dolan*, Dears. C. C. 436; 1 Jur., N. S. 72; 24 L. J., M. C. 59.

The court will not entertain a question of costs which is not within their jurisdiction, although it is expressly agreed by a case reserved that the court should have the same power, with respect to such costs, as the judge could legally have exercised at the trial. Reg. v. Hornsea, Dears. C. C. 291.

### LI. Punishment.

- 1. Penal Servitude, 597.
- 2. Returning therefrom, 598.

## 1. Penal Servitude.

20 & 21 Vict. c. 3, amends the 16 & 17 Vict. c. 99, and abolishing

transportation, substitutes penal punishment.

27 & 28 Vict. c. 47, amends the

Penal Servitude Acts, 16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3. By 32 & 33 Vict. c. 99, the Habitual Criminals Act, 1869, s. 8, "where any person is convicted on "indictment of any felony not pun-"ishable with death also, or the of-"fence of uttering false or counter-"feit coin, or of possessing counter-"feit gold or silver coin, or the of-"fence of obtaining goods or money "by false pretences, or the offence " of conspiracy to defraud, or mis-"demeanor under 24 & 25 Vict. c. "96, s. 58, and he be proved to " have been previously convicted of "robbery, theft, assault with intent "to rob, or obtaining goods or "money by false pretences, uttering "false or counterfeit coin, either "before or after the passing of the "act, then, in addition to any other " punishment which may be award-"ed to him, it shall be deemed to

"to the supervision of the police as "after mentioned for a period of "seven years, or such less period as "the court shall direct, commenc-

"be part of the sentence passed on

"him, unless otherwise declared by

"the court, that he is to be subject

"ing from the time at which he is "convicted, and exclusive of the "time during which he is undergo-

"ing his punishment.

"Where any person is subject to "the supervision of the police, he "shall be guilty of an offence pun"ishable (on summary conviction before two or more justices or a "stipendiary magistrate) with im"prisonment, with or without hard "labour, for a term not exceeding "one year, under the following cir"cumstances, or any of them:

"First. If, on his being charged
"by a constable or police offi"cer with getting his liveli"hood by dishonest means, he
"fails to make it appear to the
"justices or magistrate before

"whom he is brought that he "is not getting his livelihood by dishonest means:

"Secondly. If he is found by any
"constable or police officer in
"any place, whether public or
"private, under such circum"stances as to satisfy the jus"tices or magistrate before
"whom he is brought that he
"was about to commit or to
"aid in the commission of any
"crime punishable on sum"mary conviction or indict"ment, or was waiting for an
"opportunity to commit or aid
"in the commission of any such

" crime: "Thirdly. If he is found by any " person in or upon any dwell-"ing-house, or any building, "yard or premises, being par-"cel of or attached to such "dwelling-house, or in or upon " any shop, warehouse, count-"ing-house, or other place of "business, or in any garden, "orchard, pleasure-ground or "nursery-ground, without be-"ing able to account to the " satisfaction of the justices or "magistrate before whom he " is brought for his being found " on such premises."

## 2. Returning therefrom.

5 Geo. 4, c. 84; 11 Geo. 4 & 1 Will. 4, c. 39; 4 & 5 Will. 4, c. 67; 1 Vict. c. 90; 4 & 5 Vict. c. 56; 16 & 17 Vict. c. 99.

By the word transportation in 8 Geo. 3, c. 15, was meant not merely the conveying of the felon to the place of transportation, but his being so conveyed and remaining there during the term for which he was ordered to be transported; and, therefore, a felon attainted was not by that statute restored to his civil rights till after the expiration of the term for which he was ordered to be so transported. Bullock v. Dodds, 2 B. & A. 258.

Where a prisoner was convicted

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of perjury at the assizes at Chester, and the sentence of transportation was entered on the record as follows:—"Wherefore, all and singular the premises being seen by the justices here, and fully understood, it is therefore ordered that he, the said L. K., be transported to the coast of New South Wales, or some one or other of the islands adjacent, for and during the term of seven years":—Held, on error, that this was no judgment, but merely an order. Rex v. Kenworthy, 3 D. & R. 173; 1 B. & C. 711.

A judgment entered upon the record, that J. M. "be transported beyond the seas for the term of ten years, from the 8th day of August instant," without specifying some place of transportation, "not in Europe," is correct and valid, notwithstanding. Martin v. Reg. 3

Cox, C. C. 319.

The king's sign manual may be given in evidence by the prisoner, on an indictment for returning from transportation; and if not revoked, and the condition is literally, though not substantially, complied with, it will discharge the prisoner from that indictment. Rex v. Miller, 2 W. Bl. 797; 1 Leach, C. C. 74.

A judgment of transportation for fourteen years, if bad for excess, is bad in toto, and cannot operate as a good judgment of transportation for seven years. Rex v. Ellis, 8 D.

& R. 173.

Where a court of quarter sessions passed an erroneous judgment of transportation, the court would not send it back to be amended, but would reverse it on writ of error, before 11 & 12 Vict. c. 78, s. 5. Ib.

An indictment for being at large after an order of transportation, stated that the prisoner was capitally convicted at the assizes of 1818; and that mercy was extended to him on condition of his being transported for life to some parts beyond the seas; and that he was be to rece court of the season transported at the assizes of life to some parts beyond the seas; and that he was

thereupon ordered to be transported to New South Wales, or to some of the islands adjacent; and it appeared that the condition on which mercy was granted was not general, but specific, that he should be transported to New South Wales, or some of the islands adjacent:—Held, a fatal variance. Rex v. Fitzpatrick, R. & R. C. C. 512.

An indictment on 56 Geo. 3, c. 27, s. 8, for being at large after sentence of transportation, should set forth the effect and substance of the former conviction; so likewise should the certificate of the former conviction. Rex v. Watson, R. & R. C. C. 468; S. P., Rex v. Sut-

cliffe, R. & R. C. C. 469, n.

A prisoner convicted of a capital crime, whose sentence is respited during the king's pleasure, and who, on having received pardon on condition of transportation for life, is afterwards found at large in Great Britain, without lawful cause, will be referred back to his original sentence. Rex v. Madan, 1 Leach, C. C. 223.

A return to a habeas corpus to bring up two prisoners detained in Millbank prison, set out an act of the Royal Court of Jersey, whereby they were convicted of burglary by that court (which was alleged to be a competent court to try and punish that crime), and sentenced to be transported to such place as her Majesty in council should order. It also set out an order in council directing the place of their transportation, and a warrant of the secretary of state for their removal to Millbank prison, in order to carry the sentence into effect, and as authority to the keeper of that prison to receive them: - Held, that the court was bound to presume that the sentence being passed by a court of competent jurisdiction, and unreversed, was warranted by law and valid. Reg. v. Brenan, 10 Q. B. 492; 11 Jur. 775; 16 L. J., Q.

The judge, before whom a prisoner is tried for returning from transportation, has power to order the county treasurer to pay the prosecutor the reward under 5 Geo. 4, c. 84, s. 22. Reg. v. Emmons. 2 M. & Rob. 279 — Coleridge. S. P., Reg. v. Ambury, 6 Cox, C. C. 79—Williams.

On the trial of an indictment against a person for being at large without lawful cause before the expiration of his term of transportation, a certificate of his former conviction and sentence was put in: it purported to be that of J. G., deputy clerk of the peace for the county of L., and clerk of the courts of general quarter sessions of the peace holden in and for the said county, and having the custody of the records of the courts of general quarter sessions of the peace holden in and for the said county. It was proved that Mr. H. was clerk of the peace of L., and that he had three deputies, partners, of whom J. G., who had signed the certificate, was one; and that each of them acted as clerk of the peace; and that for forty years they had kept the sessions records at their office: — Held, sufficient proof of the conviction and sentence under 5 Geo. 4, c. 84, s. 24. Reg. v. Jones, 2 C. & K. 524-Coltman.

Where a prisoner was indicted under 5 Geo. 4, c. 84, s. 22, for being found at large in England before the expiration of a term for which he had been sentenced to be transported: — Held, that the fact of such sentence being in force at the time he was so found at large, was sufficiently proved by the certificate of his conviction and sentence, the judgment remaining unreversed; although, on the face of such certificate, it appeared that the sentence was one which could not have been inflicted on him for the offence of which, according to

mitted. Reg. v. Finney, 2 C. & K. 774—Alderson.

Under 9 Vict. c. 24, s. 1, the judge had the power of reducing the punishment of transportation for life under 4 & 5 Will. 4, c. 67, for the offence of being at large before the expiration of the term for which the prisoner had been ordered to be transported, and might under the latter statute sentence the prisoner to be transported for any term less than seven years after the imprisonment, directed by the earlier statute. Reg. v. Lamb, 3 C. & K. 96—Williams.

A certificate of previous conviction for felony, prepared under 7 & 8 Geo. 4, c. 28, s. 11, is good evidence of his conviction and sentence, on an indictment for returning from transportation before the expiration of a sentence under 5 Geo. 4, c. 84. Rey. v. Ambury, 6 Cox, C. C. 79—Williams.

In an indictment under 5 Geo. 4, c. 84, s. 22, it is necessary to aver that the prisoner was feloniously at large before the expiration of his sentence, and an indictment omitting the word "feloniously" is bad. Reg. v. Horne, 4 Cox, C. C. 263.

LII. ESCAPE, RESCUE, AND PRISON BREACH.

4 Geo. 4, c. 64; 7 & 8 Geo. 4, c. 28; 1 & 2 Geo. 4, c. 88; 7 Will. 4 & 1 Vict. c. 91; 7 Will. 4 & 1 Vict. c. 90; 28 & 29 Vict. c. 126.

A prison-breach, or rescue, is a common-law felony, if the person breaking out of prison, or rescued, is a convicted felon; and it is punishable as a common law felony by imprisonment. Rex v. Haswell, R. & R. C. C. 458.

the sentence was one which could not have been inflicted on him for the offence of which, according to such certificate, he had been com-

and has no intention to escape. Rex | v. Martin, R. & R. C. C. 196.

An indictment at common law, for aiding a prisoner's escape, should state that the party knew of his offence. Rex v. Young, 1 Russ. C. & M. 291.

A delivery of instruments to a prisoner to facilitate his escape from gaol was within 16 Geo. 2, c. 31, although he had been pardoned of the offence of which he was convicted on condition of transportation. Rex v. Shaw, R. & R. C. C. 526.

Throwing down, in attempting to escape, loose bricks at the top of a prison wall, placed there to impede escape and give alarm, is a prison - breach, though they are thrown down by accident. Rex v.Haswell, R. & R. C. C. 458.

A warrant of a justice of the peace to apprehend a party, founded on a certificate of the clerk of the peace, that an indictment for a misdemeanor had been found against such party, is good, and therefore if upon such a warrant the party is arrested and afterwards rescued, those who are guilty of the rescue may be convicted of a misdemeanor. Rex v. Stokes, 5 C. & P. 148 –Park.

It is a misdemeanor, indictable at common law, to aid a person to escape from custody, though he was confined under the remand of the commissioners for the relief of insolvent debtors, and not on any criminal charge. Reg. v. Allan, Car. & M. 295; 5 Jur. 296—Erskine and Wightman.

By 4 Geo. 4, c. 64, s. 43, if any person shall deliver to a prisoner in any prison any instrument proper to facilitate his escape, such person shall be deemed to have delivered it with intent to aid and assist such prisoner to escape; and if any person shall by any means whatever aid and assist any prisoner to escape from any prison, every person so offending, whether an escape be regularly proved, it would have

actually made or not, shall be guilty of felony:—Held, that, in an indictment under this section, it was not necessary to set out the means which had been used by the defendant to assist the prisoner to escape. Reg. v. Holloway, 15 Jur. 825; S. C. nom. Holloway v. Reg. (in error), 2 Den. C. C. 287; 17 Q. В. 319.

The act of aiding and assisting being a felony by 4 Geo. 4, c. 64, s. 43, the defendant might be indicted before the principal had been tried: and the prosecution need not be instituted within one year after the offence committed, as required by 16 Geo. 2, c. 31, s. 4. Ib.

The 28 & 29 Vict. c. 126, s. 37, enacts that any person who, with intent to facilitate the escape of any prisoner, conveys into any prison any mask, dress, or other disguise, or any letter, or any other article or thing, shall be guilty of felony:—Held, that a crowbar came within the words "any other article or thing" as used in this section. Reg. v. Payne, 1 L. R., C. C. 27; 12 Jur., N. S. 476; 35 L. J., M. C. 170; 14 W. R. 661; 14 L. T., N. S. 416.

The forcible rescue of a person from unlawful custody is illegal. Reg. v. Almey, 3 Jur., N. S. 750— Erle.

#### LIII. PARDON.

A. was, at the Spring Assizes of 1846, indicted for stealing a horse on the 26th day of February, 1841. He had, in 1842, been convicted of felony, and sent to the hulks, from which he was discharged in 1846. He produced a certificate of his discharge, which stated, that "J. H., who was convicted at Worcester, on the 22nd June, 1842, is this day discharged in consequence of having received a free pardon ":-Held, that, if this pardon had been

been no bar to the charge of horsestealing, as the pardon was expressly confined to another felony. *Reg.* v. *Harrod*, 2 C. & K. 294; 2 Cox, C. C. 242—C. C. R.

A convict sentenced to death for felony, which sentence was commuted to transportation for life, received a conditional free pardon in the penal colony:—Held, that such pardon did not alter the effect of the attainder in vesting his property in the crown. Church, In re, 16 Jur. 517.

The 5 Geo. 4, c. 84, s. 26, protects felons who have received a remission of their sentences in the enjoyment of all property acquired by them since their conviction, and not merely such property as has been acquired by their own industry. Gough v. Davies, 2 Kay & J. 623; 25 L. J., Chanc. 677.

# LIV. Appreliension and Arrest of Offenders.

1. Statutes, 602.

2. By Constables and Private Individuals, 602.

3. Warrant of Justices, 605.

4. Bench Warrants, 606.

#### 1. Statutes.

10 Geo. 4, c. 44, s. 7; 2 & 3 Vict. c. 47, ss. 63, 64, 65, 66; 6 & 7 Vict. c. 34; 11 & 12 Vict. c. 42; 16 & 17 Vict. c. 118.

Under the Larceny Act, 24 & 25 Vict. c. 96, s. 104; for malicious injuries to property, 24 & 25 Vict. c. 97, s. 57; for offences against the coinage, 24 & 25 Vict. c. 99, s. 31; for offences against the person, 24 & 25 Vict. c. 100, s. 66.

By 14 & 15 Vict. c. 19, s. 11, "after reciting that doubts have been entertained as to the authority to apprehend persons found committing indictable offences in the night, it is enacted, that it shall be lawful for any person "whatsoever to apprehend any per"son who shall be found commit"ting any indictable offence in the
"night, and to convey him or de"liver him to some constable or
"other peace officer, in order to his
"being conveyed, as soon as con"veniently may be, before a justice
"of the peace, to be dealt with ac"cording to law."

### 2. By Constables and Private Individuals.

A constable is not justified in taking a person into custody for a mere assault, unless he is present at the time. *Coupey* v. *Henley*, 2 Esp. 540—Eyre.

Using loud words in the street, though disorderly, is not an offence for which a party should be taken into custody. Hardy v. Murphy,

1 Esp. 294—Eyre.

If a party is turning towards the wall in a street on a particular occasion, a watchman is not justified in collaring him to prevent him so doing. Booth v. Hanley, 2 C. & P. 288—Abbott.

If a constable is preventing a breach of the peace, and any person stands in his way to hinder him from so doing, the constable is justified in taking such person into custody, but not in giving him a blow. Levy v. Edwards, 1 C. & P. 40—Burrough.

A peace-officer may justify an arrest on a reasonable charge of felony without a warrant, although it should afterwards appear that no felony had been committed; but a private individual cannot. Samuel v. Payne, 1 Doug. 359.

A constable having reasonable cause to suspect a person of felony may arrest him, though it appears no felony was committed. Beckwith v. Philby, 6 B. & C. 635; 9 D. & R. 487; Hobbs v. Brandscomb, 3 Camp. 420—Ellenborough.

"committing indictable offences in the night, it is enacted, that it hending a person charged on susshall be lawful for any person picion of felony, if he has reasonable or probable cause to believe that the party charged is the felon. Davis v. Russell, 2 M. & P. 590; 5 Bing. 354.

When a private person apprehends another on suspicion of felony, he does it at his peril, and is liable to an action unless he can establish in proof that the party has actually been guilty of felony. Adams v. Moore, 2 Selw. N. P. 910; S. P., Allen v. Wright, 8 C. & P. 522.

If a reasonable charge of felony is made against a person who is given in charge to a constable, the constable is bound to take him, and he will be justified in so doing, although the charge may turn out to be unfounded. Cowles v. Dunbar, 2 C. & P. 565; M. & M. 37—Abbott.

A constable arresting one on suspicion of felony, is bound to take him before a magistrate as soon as he reasonably can, and he cannot justify detaining him three days without going before a magistrate in order that evidence may be collected in support of the prosecution. Wright v. Court, 6 D. & R. 623; 4 B. & C. 596.

A constable, having taken a prisoner on suspicion of felony, has no right to handcuff him, except he has attempted to escape, or except it is necessary in order to prevent

his escaping. Ib.

Watchmen and beadles have authority at common law to arrest and detain in prison, for examination, persons walking the streets at night whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. Lawrence v. Hedger, 3 Taunt. 14.

Watchmen may imprison any person who encourages prisoners in their custody to resist. White v. Edmunds, Peake, 89—Kenyon.

Suspicion that a party has on a former occasion committed a mis-

demeanor, is no justification for giving him in charge to a constable without a justice's warrant; and there is no distinction in this respect between one kind of misdemeanor and another, as breach of the peace and fraud. Fox v. Gaunt, 3 B. & Ad. 798.

A woman died after a very short illness; rumours were generally in circulation in the neighborhood wbere she had lived that her husband had poisoned her, and a great crowd was collected in front of his house; upon which the constable of the parish, without any warrant, took him into custody, and conveyed him before a magistrate, who detained him till medical men had reported the cause of death, and then discharged him:—Held, that, if the jury was of opinion that the constable had reasonable ground of suspicion to justify the apprehension, an action could not be maintained for the arrest. Nicholson v. Hardwick, 5 C. & P. 495—Gurney.

Where the crew of a Dutch ship had mastered the vessel and ran away with her, and brought her into Deal, it was held that they might be seized and sent back to Holland. Mure v. Kay, 4 Taunt.

If a man is found attempting to commit a felony in the night, any one may apprehend and detain him until he can be carried before a magistrate. Rev v. Hunt, 1 M. C. C. 93

A charge to a constable, on taking a person into custody, that he has a forged note in his possession, without anything more, is defective, though the defect is immaterial, it not being necessary that the charge should contain the same accurate description of the offence as an indictment. Rew v. Ford, R. & R. C. C. 329.

A constable is not justified in apprehending a person as a receiver of stolen goods on the mere assertion of the principal felon. Isaacs | v. Brand, 2 Stark. 167—Ellenbo-

rough.

A wilful trespass on another person's property, without doing any real damage, is not sufficient to justify the apprehension of the parties under 1 Geo. 4, c. 56, s. 3 (since repealed, but re-enacted by 7 & 8 Geo. 4, c. 30). Butler v. Turley, 2 C. & P. 585; M. & M. 54—Best.

A., a hawker, went to the house of B. to sell goods, and a dog of B. coming out of the house, A. knocked out one of his eyes, for which B's wife caused A. to be apprehended:—Held, that it was for the jury to say whether A. had struck the dog for his own preservation, and fairly to protect himself; or whether it was a wilful and malicious trespass on his part. To justify the apprehension of an offender under the Malicious Injuries Act, 7 & 8 Geo. 4, c. 30, the offender must be taken in the fact, or on a quick pursuit. Hanway v. Boultbee, 4 C. & P. 350; 1 M. & Rob. 15—Tindal.

A person justified, under the 7 & 8 Geo. 4, c. 30, in causing the arrest of another, must do it immediately, and he must send him by the direct road to the lock-up; for if he sent him extra viam, he would be a trespasser against the person so arrested. Morris v. Wise, 2 F. & F. 51 -Byles.

A. went to a house at night, demanding to see the servant. was told to depart, and would not. A constable was sent for, and A. went from the house to the garden. When the constable arrived, A. said that if a light appeared at the windows he would break them: upon which the constable took him into custody:—Held, that the constable was not justified in so doing. Rex v. Bright, 4 C. & P. 387— Parke.

A private person is not justified in arresting or giving in charge of a

party who has been engaged in an affray, unless the affray is still continuing, or there is reasonable ground for apprehending that he intends to renew it. Price v. Seeley, 10 C. & F. 28.

In an action by A. against B. for false imprisonment, B. justified on the ground of A. having wilfully and without excuse, within view of the constable who apprehended her, annoyed and disturbed the defendant and his family by knocking and ringing at his door:—Held, that to support this plea, under sections 54 and 63 of 2 & 3 Vict. c. 47 (Metropolitan Police Act), it was necessary to prove the offence to have been committed within view of the constable. Simmons v. Millengen, 2 C. B. 524; 10 Jur. 224; 15 L. J., C. P. 102.

A police constable of the city of London has no power, under 2 & 3 Vict. c. xciv., to take a person into custody without a warrant, merely on suspicion that he has committed a misdemeanor. Bowditch v. Balchin, 5 Exch. 378.

A constable is not justified in shooting at a man whom he had seen stealing wood growing in a copse (which, if a first offence, is only a misdemeanor), although the constable has no means of arresting the man without firing, and although the stealing the wood in the particular instance amounted to felony, by reason of the man having been previously convicted several times for similar offences under 7 & 8 Geo. 4, c. 29, s. 39, these convictions being unknown to the constable at the time. Reg. v. Dadson, T. & M. 385; 2 Den. C. C. 35; 20 L. J., M. C. 57.

If a constable sees an assault committed, he may recently after that assault, and before all danger of further violence has ceased, apprehend the offender; and if in so doing he is resisted and assaulted, the person assaulting is liable to be conpoliceman, without a warrant, a victed of assaulting a constable in the execution of his duty. Reg. v. Light, 7 Cox, C. C. 389; Dears. & B. C. C. 332; 27 L. J., M. C. 1.

If a person is guilty of an assault and battery, a policeman who is present and sees the offence committed, is justified in taking the offender at once into custody without warrant, in order to take him before a magistrate to answer for the offence; and if such a person is so taken into custody, he cannot maintain an action against a bystander for directing the policeman so to take him into custody. Derecourt v. Corbishley, 1 Jur., N. S. 870; 24 L. J., Q. B. 313; 5 El. & Bl. 188.

## 3. Warrant of Justices.

General warrants are illegal and void. *Money* v. *Leach*, 1 W. Bl. 555.

A warrant to arrest the party "to the end that he may become bound, &c., at the next sessions," means the next session after the arrest; therefore the officer may justify an arrest after the sessions next ensuing the date of the warrant. Mayhew v. Parker, 8 T. R. 110; 2 Esp. 683.

A warrant issued by a magistrate for the apprehension of a party to answer a charge, should state the specific offence with which the party is charged, and that information thereof was duly made on oath before the magistrate. Caudle v. Seymour, 1 G. & D. 454; 1 Q. B. 889;

5 Jur. 1196.

Semble, that a magistrate has the power of apprehending and of requiring bail of a libeller, and for want of it, of committing him. Butt v. Conant, Gow, 84. See Haylocke v. Sparke, 1 El. & Bl. 471; 17 Jur. 731; 22 L. J., M. C. 67.

A warrant directing police officers to apprehend a party, and in safe custody to keep, so as to have his body before her Majesty's justices of the peace at the next sessions, is ill, and such custody is ille-

gal. Nisbett, Ex parte, 8 Jur. 1071

—B. C.—Patteson.

A British subject arrested abroad under a warrant upon an indictment for a misdemeanor, brought in custody to England, and there committed to prison, is not entitled to be discharged. Ex parte Scott, 4 M. & R. 361; 9 B. & C. 446.

A warrant was issued by a justice of a county, directed to the constable of the township, and generally to all her Majesty's officers of the peace in and for the county, commanding them, or some of them, forthwith to apprehend G. and convey him before two justices to answer for not obeying a bastardy order for payment of money. warrant was delivered to the superintendent of police, and had subsequently been in the possession of D., one of the police constables. Afterwards D. and S., police constables, while on duty in uniform, arrested G. under the warrant, but they had it not in their possession at the time of the arrest, it being at the station-G. was rescued by several persons, who assaulted the constables, whereupon informations for the rescue and assault were laid against the parties by the constables, and at the hearing before justices the complaint as to the rescue was withdrawn, and that for the assault proceeded with, and the parties were convicted:—Held, that the conviction was bad, as the arrest by the constables was illegal, they not having the warrant in their possession at the time. Galliard  $\nabla$ . Laxton, 9 Cox, C. C. 127; 2 B. & S. 363; 31 L. J., M. C. 123.

Held, also, that the withdrawal of the information as to the rescue was no bar to proceeding with the complaint as to the assault. *Ib*.

On a Sunday.]—The exception, in 29 Car. 2, c. 7, s. 6, that process may be executed on the Lord's day, in case of treason, felony or breach

of the peace, extends to all indictable offences, and is not restricted to treason and felony, and such misdemeanors as involve an actual breach of the peace. Rawlins v. Ellis, 10 Jur. 1039; 16 M. & W. 172; 16 L. J., Exch. 5.

#### 4. Bench Warrants.

Bench warrants should not be granted unless it is necessary that the party charged should be at once taken into custody. Reg. v. Whittaker, 2 F. & F. 1—Hill.

The court will not issue a bench warrant to bring up a witness, although it is sworn that he is keeping out of the way collusively, and that his evidence is so material to the prosecution that the case cannot go on without him, but will postpone the trial to allow the witness's recognizances to be estreated on his non-appearance when called. Reg. v. Crawford, 6 Cox, C. C. 481.

A warrant of a judge of the Queen's Bench issued, directed to the governor of a gaol, constables, &c., directing them to apprehend and take a party against whom a bill for a misdemeanor had been found at quarter sessions, and him safely keep, to the end that he may become bound and find sufficient sureties to answer the indictment, and be further dealt with according to law, is a bad warrant, for not directing that the party should be brought before some judge or justice to be bound. Reg. v. Downey, 7 Q. B. 281; 9 Jur. 1073; 15 L. J., M. C. 29.

## LV. SEARCH WARRANTS.

By 11 & 12 Vict. c. 42, s. 4, "it "shall be lawful for any justice or "justices of the peace to grant or "issue any search warrant on a "Sunday as well as on any other "day."

By 24 & 25 Vict. c. 96, (Larceny

Consolidation Act,) s. 103, "if any "credible witness shall prove upon "oath before a justice of the peace "a reasonable cause to suspect that "any person has in his possession, "or on his premises, any property "whatsoever, on or with respect to "which any offence, punishable "either upon indictment, or upon "summary conviction by virtue of "that act, shall have been committed, the justice may grant a war-"rant to search for such property "as in the case of stolen goods."

For forged instruments, see 24 & 25 Vict. c. 98, s. 46; for counterfeit coin, and coining implements, 24 & 25 Vict. c. 99, s. 27; and for gunpowder and explosive substances, 24 & 25 Vict. c. 97, s. 55.

A positive oath that a felony is actually committed is not necessary to justify a magistrate in granting his warrant to search the premises and apprehend the person of a party suspected of felony. Elsee v. Smith, 1 D. & R. 97; 2 Chit. 304.

Where a constable, having a warrant to search for certain specific goods alleged to have been stolen, found and took away those goods, and certain others also supposed to have been stolen, but which were not mentioned in the warrant, and were not likely to be of use in substantiating the charge of stealing the goods mentioned in the warrant:

—Held, that the constable was liable to an action of trespass. Crozier v. Cundy, 6 B. & C. 232; 9 D. & R. 224.

Excise officers went with a search warrant, and, at the desire of the party, gave it him to peruse, when he refused to return it:—Held, that they had a right to take it from him, and even to coerce his person to obtain the possession of it, provided they used no more violence than was necessary. Rex v. Mitton, 3 C. & P. 31—Tenterden: S. C. nom. Rex v. Mitton, M. & M. 107.

As to the proper mode of execu-

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ting search warrants, see Entick v. Carrington, 19 St. Tr. 1030.

## LVI. ARTICLES OF THE PEACE.

- When exhibited generally, 607.
- 2. Justices, 608.
- On passing Sentence, 609.
   Practice, 609.

### 1. When exhibited generally.

Articles of the peace ought to be exhibited in the neighbourhood, that the security may be given there. Rex v. Waite, 2 Burr. 780; 2/Ld. Ken. 511.

Where a person exhibits articles of the peace, and swears that her life is in danger, the truth of the facts cannot be controverted. Lord Vane's case, 13 East, 172, n.

There ought to be a reasonable foundation on the face of the articles. to induce a fear of personal danger, before the court will require sureties of the peace. Ib.

The facts stated in the articles are to be considered as true till the contrary appears upon a proper prosecution. Ib.

One, against whom articles of the peace are exhibited, is not entitled to read affidavits on his behalf, in contradiction of the facts sworn to against him in such arti-Rex v. Doherty, 13 East, 171.

Upon articles of the peace exhibited, the court has power of requiring bail for such a length of time as they think necessary for the preservation of the peace, and are not confined to a twelvemonth. Rex v. Bowes, 1 T. R. 696.

When articles of the peace appeared malicious and untrue, the court stayed process on them, and committed the exhibitant for per-Rex v. Parnell, 2 Burr. 806.

The court cannot interfere to reduce the amount of security which the magistrates require a party to give for the preservation of the

peace. Rex v. Holloway, 2 D. P. C. 525.

A party gave information on oath before a magistrate, that, from certain language used towards him, he was in bodily fear from another, and the magistrate, upon hearing the complaint, required the latter to enter into recognizances to keep the On motion to discharge the recognizances, on the ground that the language was used in a metaphorical sense only, the court refused to interfere, because it was for the magistrates to judge in what sense the language was used. Rex v. Tregarthen, 5 B. & Ad. 678; 2 N. & M. 379.

The power of justices to require sureties to keep the peace is derived from the commission of the peace, and it is confined to cases where a party makes it appear to the justices, that he goes in fear and in danger of personal violence from another, by reason of threats employed by him, or by reason of looks, gestures and conduct; but the party applying for protection must himself draw the inference that he is in fear of personal violence. Reg. v. Dunn, 1 Årn. & H. 21; 5 Jur. 721; 12 A. & E. 599.

H. had written a letter to a young lady, a relative of T.; T. afterwards, in consequence of his writing the letters, violently assaulted H., and said, "If you write again, I will flog you within an inch of your life.", On a subsequent occasion, T. meeting H., said to him, "Remember what I said to you; I am determined to put a stop to your proceedings." The court permitted H. to exhibit articles of the Hulse, Ex parte, peace against T. 21 L. J., M. C. 21—B. C.—Wightman.

It is sufficient ground for articles of the peace that the complainant has been accustomed to go to a particular place, rightfully, as he alleges, for the transaction of business, and has been threatened with violence if he goes there again. Reg. v. Mallinson, 16 Q. B. 367.

The court will, if it sees ground, require sureties of the peace, although justices have refused to do so on the same complaint. *Ib*.

#### 2. Justices.

A justice of the peace is not authorized to require a party to find sureties to keep the peace for an unlimited time. *Prickett v. Gratrex*, 2 New Sess. Cas. 429; 8 Q. B. 1021; 10 Jur. 566; 15 L. J., M. C. 145.

It is not necessary that a commitment for want of sureties should mention the sum in which the party and his sureties are to be bound. *Ib*.

A warrant of commitment, in substance stated, that whereas the plaintiff had been brought before the defendant (who was a justice), charged on the oath of T. P. with having written on the pavement in a lane the offensive words reflecting on the character of R. T. W., "Donkey Watt, the railway jackass"; and it having been stated to the defendant on the oath of T. P. that the continued writing for some time past of the offensive words was calculated to produce a breach of the peace, and T. P. prayed that the plaintiff might be required to find sureties to keep the peace, he, the defendant, ordered and adjudged that the plaintiff should enter into his own recognizances in 201., with two sufficient sureties in 15l. each, to keep the peace for three The warrant calendar months. stated that the plaintiff had refused to enter into such recognizance and find such sureties, and commanded that the plaintiff should be conveyed to prison and there kept for the space of three months, unless the plaintiff in the meantime entered into such recognizance with such sure-This warrant was afterwards quashed on motion, and an action of trespass brought against the defendant who granted it:—Held, plaintiff was information of the evidence recited in it. *Haylock* v. *Sparke*, 1 El. & Bl. 471; 17 Jur. 731; 22 L. J., M. C. 67.

Held, secondly, that it must be taken that the defendant intended to require sureties for good behaviour, notwithstanding the words "sureties of the peace" in the warrant. Ih

Held, thirdly, that a justice of the peace has jurisdiction to require sureties for good behaviour in some cases of libels against private individuals, and that therefore the defendant had jurisdiction in the matter out of which the cause of action arose, and within 11 & 12 Vict. c. 44, s. I, and consequently was not liable to an action of trespass. Ib.

Articles of the peace were exhibited against A. at the quarter sessions of the county of H., and he was by that court ordered to enter into recognizance before one or more justices of H. to keep the peace for six calender months thence ensuing.

Under the warrant of two justices of H., A. was brought before two justices of the same county, to shew cause why he should not enter into the recognizance, and he then refused to do so, whereupon the justices last mentioned committed him to the county gaol for the then residue of six calendar months from the date of the order of quarter sessions, unless he should in the meantime enter into the recognizance:—Held, that the justices had no power to commit, and that the prisoner was entitled to be discharged on habeas corpus. Ashton or Aston, In re, 1 New Sess. Cas. 581; 7 Q. B. 169; 9 Jur. 727; 14 L. J., M. C. 99.

A justice of the peace may commit to the house of correction, under 6 Geo. 1, c. 19, s. 2, for want of sureties to keep the peace. Aston, In re, 1 New Sess. Cas. 73; 12 M. W. 456; 8 Jur. 293.

fendant who granted it:—Held, In a warrant of commitment for first, that the warrant put in by the want of sureties to keep the peace,

in consequence of having used language threatening bodily harm to an individual, it is not necessary that the warrant should shew the nature of the bodily harm threatened, or when the lauguage was used.

### 3. On Passing Sentence.

In all cases of misdemeanor punishable by imprisonment, the Queen's Bench, and, therefore the judge at the trial, has power to adjudge that the defendant give security to keep the peace for a certain time, and that he be kept in prison until such security be given. Dunn v. Reg. (in error), 12 Q. B. 1026; 13 Jur. 233; 18 L. J., M. C. 41—Exch. Cham.

Quære, whether a judgment which directs that each of several defendants shall enter into recognizances to keep the peace for the space of seven years next ensuing the acknowledgment thereof, is good, as no period is fixed for entering into the recognizances? O' Connell v. Reg. (in error), 11 C. & F. 155; 9 Jur. 25.

If, after the grand jury is discharged, a prisoner charged with maliciously shooting is acquitted, the judge will not order him to be detained while articles of the peace against him are prepared. Holt, 7 C. & P. 518—Littledale.

#### 4. Practice.

The court granted an attachment upon articles of the peace where the threat of further violence was conditional on the exhibitant writing again to a member of the defendant's family, although it did not appear that the exhibitant had written again, or was under any necessity of doing so. Reg. v. Tollemache, 2 L., M. & P. 401-B. C.-Wight-

Where a peer had been arrested by a warrant of two justices, and bound by recognizances with two Fish. Dig.—46.

sureties to keep the peace, the court refused an application for a certiorari to bring up the recognizances (on the ground of the justices having no jurisdiction), as the applicant was not in custody; and, in the event of its being necessary to enforce the recognizances, their validity could be tried in another way. Gifford (Lord), Ex parte, 1 New Sess. Cas. 490.

Where articles of the peace have been filed, and an attachment issued for the purpose of bringing in the defendant to find sureties, the court will not entertain an application to discharge the articles and to award costs under 21 Jac. 1, c. 8, s. 2, on the ground of alleged insufficiency of the articles, though notice of such application has been given to the prosecutor. Reg. v. Mallinson, 16 Q. B. 367; 15 Jur. 746.

A party, against whom articles of the peace have been exhibited in the court, cannot call upon the prosecutor to shew cause why the articles should not be discharged.

Affidavits are not admissible for the purpose of supplying facts said to have been suppressed by the complainant, as the contents of a correspondence alluded to in the articles. Nor is it an objection to the articles that such correspondence is not set out, if it does not contain any part of the menace relied upon.

Where articles of the peace were returned by certiorari, and affidavits made by others than the exhibitant were subjoined on the same parchment, and the whole ended with the following jurat-"sworn by the several deponents," &c.: -Held, that it sufficiently appeared that the articles had been exhibited on oath. Reg. v. Dunn, 12 A. & E. 599; 4 P. & D. 415; 1 Arn. & H. 21; 5 Jur. 721.

On habeas corpus bringing up a party committed by justices for not finding sureties of the peace, the court will not hear affidavits contro-

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verting facts alleged in the articles of the peace. Ib.; S. P., Reg. v. Stanhope, 12 A. & E. 620, n.

The court of Queen's Bench has authority to examine the allegations contained in articles of the peace when they are brought up by certiorari, and to quash the articles, if no sufficient offence is alleged to justify the justices in ordering the defendant to give sureties of the peace. Ib.

#### LVII. BAIL.

1. Felony, 610.

2. In Misdemeanors and other Cases,

### In Felony.

By 7 Geo. 4, c. 64, the 3 Edw. 1, c. 15; 23 Hen. 6, c. 9; 3 Hen. 7, c. 3, were partially, and 1 & 2 P. & M. c. 13, was wholly repealed; and 7 Geo. 4, c. 64, ss. 1, 2, 3, and 5 & 6 Will. 4, c. 33, s. 3, are repealed by 11 & 12 Vict. c. 42, s. 34.

By 11 & 12 Vict. c. 42, ss. 23, 24, 25, "the law and practice of "taking bail by justices in cases of "felony and of misdemeanor are reg-" ulated."

The court, in exercising its discretion of admitting a prisoner to bail, will consider the seriousness of the charge, the evidence in support of it, and the punishment which the law awards for the offence. Barronet, In re, 1 El. & Bl. 1; Dears. C. C. 51; 17 Jur. 184; 22 L. J., M. C. 25.

Upon an application to be admitted to bail by two Frenchmen, who had been committed on a coroner's inquest, and by a warrant of justices, for wilful murder in a duel, their affidavits stated that they had acted as seconds of the deceased, that the duel was fair, that they were ignorant of the law of England, and that the part which they took in the duel was not considered that there being a confession guilt, the court was not justified in admitting them to bail.

A similar application was made on behalf of two other Frenchmen, under the same circumstances, upon the production of verified copies of the depositions before the coroner and before the magistrates; the prisoners made no affidavit. The court refused the application, on the ground that the depositions contained evidence to support the finding of the coroner's inquest. Barthelemy, In re, Dears. C. C. 60; 1 El. & Bl. 1; 17 Jur. 184; 22 L. J., M. C. 25.

The court refused to bail a prisoner, who was charged on a coroner's inquest with murder, and against whom a bill for the same crime had been found by the grand jury; although his trial had been postponed in consequence of the absence of witnesses for the prosecution; and it was alleged, that, on the face of the depositions, as taken before the coroner, the charge of murder could not be sustained. Reg. v. Andrews, 2 D. & L. 10; 1 New Sess. Cas. 199; 8 Jur. 799; 13 L. J., M. C. 113-B. C.-Wightman.

On an application to bail a prisoner charged with a criminal offence, the test to govern the discretion of the court is the probability of the prisoner's appearing to take his trial; but, in applying that test, the court will not look to the character or behaviour of the prisoner at any particular time, but will be guided by the nature of the crime charged, the severity of the punishment that may be imposed, and the probability of a conviction. Robinson, In re, 23 L. J., Q. B. 286-B. -Coleridge.

The principle on which a party committed to take his trial for an offence may be bailed, is founded on the probability of his appearing to take his trial, and not on his supposed guilt or innocence; but the in France any legal offence :-Held, | fact of a bill having been found against him is material in estimating that probability. Reg. v. Scaife, 9 D. P. C. 553; 5 Jur. 700—B. C.

A judge will not admit a prisoner to bail after the grand jury has returned a true bill against him for murder. Reg. v. Chapman, 8 C. & P. 558—Abinger.

Where neither the husband of a feme covert, nor her next of kin, can be discovered, service of a rule nisi for bailing a prisoner on a charge of manslaughter, may be made on the coroner. Reg. v. Williams, 8 D. P. C. 301; 4 Jur. 654—B. C.

Where, after conviction by a jury at the assizes, questions of law have been reserved for the Court of Criminal Appeal, the prisoner will not be admitted to bail without the assent of the judge before whom he was tried. Reg. v. Harris, 4 Cox, C. C. 21—Erle.

After defendants have been admitted to bail on a criminal charge, the court will not, on affidavit of aggravating facts, increase the bail. Rex v. Salter, 2 Chit. 109.

Now it is an invariable rule to require four bail in cases of felony. Rex v. Shaw, 6 D. &. R. 154.

In the Country.] — Where the court thinks that a prisoner ought to be bailed for felony, if he is unable to defray the expense of being brought to Westminster for that purpose, they will grant a rule to shew cause why he should not be bailed by a magistrate in the country. Rex v. Jones, 1 B. & A. 209.

The court will not allow a defendant who is out of custody, to be bailed before a magistrate in the country; he must surrender in court, in order to be bailed. Rex v. Wren, 5 D. P. C. 222.

In order to entitle a defendant on a charge of felony to be bailed before a magistrate in the country, it is not necessary to produce an affidavit of poverty, if it appears from the other affidavits in the case that he is in an humble situation of life. Rex v. Booker, 2 D. P. C. 446.

The court will grant a rule nisi for bailing in the country a party charged with a felony, without the production of an affidavit of his poverty. Reg. v. Gregory, 9 D. P. C. 129.

In order to a party being bailed in London for an offence committed in the country, the depositions should be removed by certiorari, and notice served on the committing magistrates and on the prosecution. Rex v. Braithwaite, 2 Lewin, C. C. 55—Littledale.

### 2. In Misdemeanors and other Cases.

(11 & 12 Vict. c. 42, ss. 23, 24, 25.)

By 16 & 17 Vict., "provisions are "enacted for staying execution of "judgment for misdemeanors in giving bail in error."

It is a clear principle of law, that a person charged with a misdemeanor is entitled to be bailed on producing sufficient sureties. Reg. v. Badger, 4 Q. B. 468; D. & M. 375; 7 Jur. 216; 12 L. J., M. C. 66.

A magistrate has no right to reject bail, on account of the character or political opinions of bail, if he is satisfied of their pecuniary sufficiency. *Ib*.

Where an indictment for conspiracy had been removed by certiorari, and the ordinary bail had been given, but after trial and the conviction of the defendant, and before judgment, a motion was made to quash the indictment for insufficiency, and pending such motion one of the bail became insolvent, and offered a composition to his creditors; the court refused to require the defendant to give fresh bail. Reg. v. Johnson, 1 D. & L. 132; 7 Jur. 1038—B. C.—Wightman.

A motion for fresh bail ought to be made at chambers, and not in

court. Ib.

fidavit of poverty, if it appears from the other affidavits in the case that cept or refuse bail in cases of misde-

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BAIL.

meanor is a judicial duty, and an action will not lie against him for refusing to take bail in such cases without proof of express malice, even though the sureties tendered are found by the jury to have been Linford v. Fitzroy, 3 sufficient. New Sess. Cas. 438; 13 Q. B. 240; 13 Jur. 303; 18 L. J., M. C. 108.

Where a certiorari had issued to bring up a conviction under 4 Geo. 4, c. 34, for the purpose of being quashed for defects on the face of of it, the court admitted the defendant, who was in prison under the conviction, to bail. Lord, Ex parte, 4 D. & L. 405; 1 B. C. Rep. 222; 16 L. J., M. C. 15-Patteson.

It is the duty of magistrates, in all cases, to commit an accomplice, and not to admit him to bail, notcall the accomplice as a witness on the trial. Rex v. Beardmore, 7 C. & P. 497—Patteson.

It is the duty of a magistrate to ascertain the sufficiency of the bail who tender themselves on behalf of an accused party, but he ought not to interfere in any way to dissuade them from becoming bound as bail. Reg. v. Saunders, 2 Cox, C. C. 249.

A defendant, brought up for judgment after conviction, stands committed, unless the prosecutor consents to bail. Rex v. Wadding-

ton, 1 East, 159.

Where bills for misdemeanors are found under the commission of over and terminer at the Central Criminal Court, the defendant must give 48 hours' notice of bail, unless the application for process is made on a Friday, in any case in which there is reason to think that there is a desire to keep the party in custody over Sunday. Rex v. Carlile, 6 C. & P. 628.

It is in the discretion of the judge to bail the prisoner or not, when his trial is postponed on account of the absence of the prosecutor. Anon.2 Lewin, C. C. 260—Parke.

held that an entry by an inferior jurisdiction did not amount to a judgment, but was merely an order, the court awarded a procedendo to the court below commanding them to proceed to give the proper judgment, but in the mean time alallowed the prisoner to be bailed. Rex v. Kenworthy, 3 D. & R. 173; 1 B. & C. 711.

The bail of one acquitted of perjury will be discharged, although the acquittal is not entered of rec-Rex v. Spencer, 1 Wils. 315.

When the House of Lords voted the defendant guilty of a breach of privilege, and committed him to prison, the court refused to discharge him out of custody. Flower, 8 T. R. 314.

A commitment by a justice of the withstanding it may be intended to peace for a time certain, as for fourteen days, under the vagrant act, is a commitment in execution, and the party is not entitled to be bailed. - Rex v. Brooke, 2 T. R. 190.

> In the Country. —An attachment upon articles of the peace is bailable before justices of the county. v. Bomaster, 1 W. Bl. 233.

> A party indicted for a misdemeanor at York, may put in bail in London. Swaile's case, 1 Lewin, C. C. 19—Holroyd.

> Recognizances. —The word forthwith in a notice to a party charged criminally, and out on bail, to appear, on pain of forfeiting his recognizance, means, "within a reasonable time from the service." and not from the date of the notice. Reg. v. Price, 8 Moore, P. C. C. 203.

Indemnification of Bail.]—On the removal into the Queen's Bench of an indictment for a conspiracy against the defendant, the plaintiff became one of his bail in 40l., the condition of the recognizance being, that the defendant should plead, Where on error brought it was and at his own costs cause the indictment to be tried, and appear personally, and not depart till discharged by the court. The defendant appeared, and was tried and convicted; and the costs of the prosecution not having been paid, pursuant to 5 Will. & M. c. 11, the recognizances were escheated, and the plaintiff was compelled to pay The plaintiff having the 401. brought an action for money paid against the defendant to recover the 40*l*.:—Held, that as an express promise by a defendant in a misdemeanor to indemnify his bail against the consequences of not paying the cost of the prosecution would not be illegal, the law would imply a promise to that extent, and the plaintiff could therefore recover. Jones v. Orchard, 16 C. B. 614; 1 Jur., N. S. 936; 24 L. J., C. P. 229.

Where B. promised verbally to indemnify A. against all liability if he would become bail for the appearance of C. to answer a charge of misdemeanor, and A., in consequence, became bail for C., the agreement need not be in writing, as the promise is a mere promise to indemnify, and not a promise to answer for the debt or default of another, since no debt or legal duty was owing from C. to A. in consequence of his having become bail. Cripps v. Hartnoll, 32 L. J., Q. B. 381; 11 W. R. 953; 10 Jur., N. S. 200; 8 L. T., N. S. 765—Exch.

#### LVIII. Costs.

- Expenses of Prosecution, 613.
   Rewards for extraordinary Exer-
- tions and Diligence, 615.
- In other Cases, 615.
   After Removal by Certiorari, 615.
- 5. Practice, 619.

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Taxation, 621.
 Enforcing Payment, 621.

### 1. Expenses of Prosecution.

7 Geo. 4, c. 64, s. 22, and 14 & 15 from such other person by a false Vict. c. 55, "regulate the allowance pretence, with intent to cheat or de-

" of prosecution in felonies and misdemeanors."

The 7 Geo. 4, c. 64, repeals 25 Geo. 2, c. 36; 27 Geo. 2, c. 3; 18 Geo. 3, c. 19; and 58 Geo. 3, c. 70, so far as related to this subject. The costs of prosecution are allowable and enforceable under the Larceny Consolidation Statute, see 24 & 25 Vict. c. 96, s. 121; under the Malicious Injuries to Property Act, 24 & 25 Vict. c. 97, s. 77; under the Forgery Consolidation Statute, 24 & 25 Vict. c. 98, s. 54; under the Coinage Consolidation Statute, 24 & 25 Vict. c. 99, s. 42; and under the Statute relating to Offences against the Person, 24 & 25 Vict. c. 100, s. 77.

By 29 & 30 Vict. c. 52, "the law "relating to the expenses of prose"tions is extended to the payment 
"of expenses incurred in attending 
before magistrates, but this enact"ment is only for three years."

In frivolous cases of felony a judge will not allow the prosecutor's expenses, although he may be bound over to prosecute by a magistrate. Rea v. Powell, 1 C. & P. 96—Park.

On an application for costs under 14 & 15 Vict. c. 55, s. 3, in a case of assault the judge must be satisfied that the defendant was taken before magistrates for their summary decision of the case, and by them sent for trial at the assizes; but the prosecution of the summons granted by one of the magistrates for the defendant to appear before such magistrates as should then be there, to answer the complaint, and be further dealt with according to law, is sufficient for this purpose. Reg. v. M' Gavaron, 3 C. & K. 320; 6 Cox, C. C. 64—Williams.

An indictment under 8 & 9 Vict. c. 109, which enacts that every person who by fraud or unlawful device or ill practice in playing cards, shall win from any other person any sum of money or valuable thing from such other person by a false pretence, with intent to cheat or de-

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fraud such person of the same, and being convicted thereof, shall be punished accordingly, is within 7 Geo. 4, c. 64, s. 23, which empowers the court to order the costs of prosecution in indictments, for knowingly and designedly obtaining any property by false pretences. Reg. v. Gardner, 5 Cox, C. C. 140—Talfourd.

On a conviction of forgery, the trial taking place in the county of S., but the material acts appearing to have been done partly in the county of D., and partly in the borough of O., in the county of S., which borough had its own rate in the nature of a county rate, the judge of assize made an order upon the borough treasurer, under 7 Geo. 4, c. 64, s. 25, for payment of the prosecutor's The order was not disputed costs. during the assizes. The borough afterwards contesting it, and a mandamus being moved for:—Held, that the judge's order was conclusive, and that a mandamus might issue to enforce the payment. Reg. v. Oswestry (Treasurer) or Reg. v. Hayward, 12 Q. B. 239; 12 Jur. 744; 17 L. J., Q. B. 223.

A prosecutrix and witnesses were bound by recognizance to appear against a prisoner at the assizes on a charge of felony. By the advice of counsel, instead of an indictment for felony, an indictment was preferred for a misdemeanor at common law, on which no costs could be allowed. The judge made an order for the expenses of the attendance of the prosecutrix and witnesses. Reg. v. Hanson, 2 C. & K. 912—Williams.

A prosecutor and his witnesses were bound by recognizances to prosecute and give evidence at the assizes. They attended there, and preferred an indictment, which was found. The prisoner had been by mistake discharged by proclamation at an adjourned sessions which precede the assizes, and had absconded. The judge allowed the expenses.

Rex v. Robey, 5 C. & P. 552— Taunton.

A party who is bound over to prosecute at a superior court by a court of quarter sessions, is entitled to his expenses. Rex v. Paine, 7 C. & P. 135.

Under 7 Geo. 4, c. 64, s. 22, the court may, in case of felony, allow the costs of the prosecutor and witnesses, though they are not under recognizances. Reg. v. Butterwick, 2 M. & Rob. 196—Parke.

Where an indictment on 7 & 8 Geo. 4, c. 30, s. 16, was removed by certiorari into the King's Bench, and is tried on a record issuing out of that court, the expenses of prosecution cannot be allowed under 7 Geo. 4, c. 64, s. 22. Rex v. Kelsey, 1 D. P. C. 481.

Where the clerk of the peace, authorized to prosecute at the expense of the county, had not prosecuted, the expenses of prosecution were not allowed. Reg. v. Cook, 1 F. & F. 389—Bramwell.

The court has no power to make an order on the treasurer for the interlocutory costs of a prosecution, and will not make any till the trial has actually taken place. In re Young, 2 Cox, C. C. 280—Patteson.

The court has no power to order payment, as part of the expenses of a prosecution, of the costs incurred by the warders of Millbank prison, in bringing down to Wells a prisoner in custody at Millbank, as an escaped convict, to be tried at Wells, on a charge of larceny from the person. Reg. v. Waters, 8 Cox, C. C. 350—Channell.

Under the words "in otherwise carrying on such prosecution," in 7 Geo. 4, c. 64, s. 22, extra expenses which had been incurred in getting up a prosecution, ordered to be reimbursed. *Lewen's case*, 2 Lewin, C. C. 161—Denman.

Where the prosecutor of an indictment for a misdemeanor found at sessions removes it into the Queen's Bench by certiorari, he is not entitted to costs under 7 Geo. 4, c. 64, s. 23. Rex v. Richards, 2 M. & R. 405; 8 B. & C. 420; S. P., Rex v. Johnson, 1 M. C. C. 173.

The prosecutor, in a case of perjury, who has included his name in a subpæna, is entitled to his costs as a prosecutor, though he is not bound over to prosecute by a magistrate, and he is not limited to his expenses incurred as a witness only. Rex v. Sheering, 7 C. & P. 440-Parke and Coleridge.

Justices of the peace at the quarter sessions have no authority, by an act of parliament, to order the costs of a prosecution for a misdemeanor, carried on under the direction of magistrates, to be allowed out of the county rates. Rex v. W. R. Yorkshire, 7 T. R. 377.

Where to an indictment at the assizes for a misdemeanor the defendants consented to plead guilty, upon an understanding that they were not to be brought up for judgment, and no stipulation or agreement having been then expressly made by the prosecutor for the payment of his costs:-Held, that he was not afterwards entitled to a rule on the crown side to have his costs taxed. Rex v. Rawson, 4 D. & R. 124; 2 B. & C. 598.

### 2. Rewards for extraordinary Exertions or Diligence.

On an indictment for an attempt to murder by suffocating, the allowance of extra expenses for apprehending the prisoner is within the spirit and intention of the 7 Geo. 4, c. 64, s. 28, though not within the words. Durkin's case, 2 Lewin, C. C. 163—Patteson.

Under the word "exertions," in 7 Geo. 4, c. 64, s. 28, a gratuity awarded to a prosecutor for his courage in apprehending the prisoner. Womersley's case, 2 Lewin, C. C. 162—Parke.

A person residing in a house broken into by burglars, and who, | moved by certiorari, the court has

by fastening them in a room, detains them there until assistance is obtained, and the capture of the offenders effected, is within 7 Geo. 4, c. 64, s. 28. Reg. v. Dunning, 5 Cox, C. C. 142—Talfourd.

An application under 7 Geo. 4, c. 64, s. 28, must be founded on an affidavit of the amount actually expended. Reg. v. Haines, 5 Cox, C.

C. 114—Campbell.

A judge has no power to order payment of the expenses incurred in the apprehension of a prisoner who has left England. Reg. v. Barrett, 6 Cox, C. C. 78 — Wil-

Rewards, under 7 Geo. 4, c. 64, s. 28, are not confined to cases where the person apprehending has had a loss of time or has been at any expense. Reg. v. Barnes, 7 C. & P. 166—Coleridge.

Where a reward is applied for under 7 Geo. 4, c. 64, s. 28, and the facts on which the application is grounded are not in evidence, the judge requires an affidavit of them. Rex v. Jones, 7 C. & P. 167 -Parke.

#### Costs in other Cases.

Costs for not going to trial shall be paid to a defendant, by the course of the court, on informations for misdemeanors, where the prosecutor does not countermand his notice of trial in time. Rex v. Heydon, 3 Burr. 1304.

But a prosecutor is not to pay costs for not going to trial according to his notice, if it is not occasioned by his own default. v. *Righton*, 3 Burr. 1694.

A rule for the costs of the day for not proceeding to trial on an indictment for perjury pursuant to notice, is absolute in the first instance. Reg. v. Hazard, 1 W., W. & H. 417; 2 Jur. 1067—B. C.

### 4. After Removal by Certiorari.

In the case of an indictment re-

COSTS.

no power to order the payment of costs incurred before the removal. Rex v. Pasman, 3 N. & M. 730; 1 A. & E. 603.

Rated inhabitants of a parish, who were prevented by rioters from entering the vestry-room to attend a meeting called for the purpose of imposing a church-rate, and who afterwards prosecuted the offenders, are parties grieved within 5 & 6 Will. & M. c. 11, s. 3; and therefore entitled to costs on conviction of the defendants after removal of the indictment by certiorari. Rex v. Thompkins, 2 B. & Ad. 287.

Where a defendant who removes an indictment by certiorari is convicted, he shall not pay costs under 5 & 6 Will. & M. c. 11, to the prosecutors. Rex v. Ingleton, 1

Wils. 139.

Where a defendant removes an indictment by certiorari, and enters into recognizances with two sureties, under 5 & 6 Will. & M. c. 11, ss. 2 & 3, and 8 & 9 Will. 3, c. 33, and is convicted, the sureties are liable to pay the prosecutor his costs. Reg. v. Bezant, 7 D. P. C. 680; 2 W., W. & H. 113; 3 Jur. 279.

Where an indictment was removed by certiorari at the instance of a defendant, and he was found guilty, the costs of conveying him to gaol, on his receiving sentence of imprisonment, are reasonable costs within 5 & 6 Will. & M. c. 11, s. 3, to be allowed to the prosecutor on taxation. Rex v. Gilbie, 5 M. & S. 520; 2 Chit. 159.

A public body at its own expense preferred an indictment for a libel upon A., one of its officers, in the name of A. as prosecutor. The defendant removed the indictment by certiorari, and was convicted:—Held, that no costs could be awarded under 5 & 6 Will. & M. c. 11, s. 3. Rex v. Devhurst, 2 N. & M. 253; 5 B. & Ad. 405.

The provisions of the 5 & 6 Will. titled to costs under 5 & 6 Will. & & M. c. 11, ss. 2 & 3, attach only M. c. 11, s. 3, as justices of the

upon a defendant being convicted by judgment; and therefore if, after a verdict of guilty, the judgment is arrested, no costs can be taxed for the prosecutor. Rex v. Turner, 15 East, 570.

The prosecutor of an indictment removed by certiorari is only entitled under 5 & 6 Will. & M. c. 11, s. 3, to the costs of the counts on which the defendant is convicted. Rex v. Hawdon, 3 P. & D. 44; 11 A. & E. 143.

Persons dwelling near a steamengine, which emitted volumes of smoke, affecting their breath, eyes, clothes, furniture, and dwellinghouses, and prosecuting an indictment for it, are parties grieved, and entitled to have their costs taxed under 5 & 6 Will. & M. c. 11, s. 3, upon removal of the indictment by certiorari from the sessions into the court by the defendants, and their subsequent conviction. Rex v. Dewsnap, 16 East, 194.

A defendant was convicted of perjury on an indictment removed at his instance, by certiorari:— Held, that the prosecutors, who were executors of a deceased person, were entitled to costs under 5 & 6 Will. & M. c. 11, as persons grieved or injured, although the perjury occasioned them no actual damage, it being sufficient to bring the case within the statute that the perjury might have caused them damage, and the false oath of the defendant having put a difficulty in their way, which they were compelled to remove. Reg. v. Major, Dears. C. C. 13; 1 B. C. C. 68; 21 L. J., M. C. 21—Wightman.

If the metropolitan police commissioners appointed under 10 Geo. 4, c. 44, s. 1, direct an indictment for assaulting one of the police constables in the execution of his duty, and the defendant removes such indictment by certiorari and is convicted, the commissioners are entitled to costs under 5 & 6 Will. & M. c. 11, s. 3, as justices of the

peace and civil officers whom it concerned to prosecute. Reg. v. Waldegrave (Earl), 2 Q. B. 341; 1 G. & D. 615; 6 Jur. 502.

Where an indictment has been removed by certiorari, and a conviction obtained, the person who, being a party grieved, retained and is liable to the attorney for the prosecution, is entitled, under 5 & 6 Will. & M. c. 11, s. 3, to the costs of such prosecution, though other aggreeved parties, after the attorney was retained and the indictment removed, agreed to contribute part of the costs, and they are not joined in the application. Reg. v. Williams, 6 Q. B. 273; 8 Jur. 559; 15

L. J., Q. B. 98.

A side-bar rule for costs having been obtained by the prosecutors of an indictment for an obstruction to a highway as parties grieved, within 5 & 6 Will. & M. c. 11, s. 3, the court refused to discharge it on the ground that the expenses of the prosecution had been paid out of the funds of a society, of which some of the prosecutors were members, and that money had been raised by public subscription towards paying those expenses; or on the ground that all the prosecutors were not parties aggrieved; or on the ground that the certiorari for removing the indictment had been obtained at the instance of one only of the defendants. Reg. v. Dobson, 9 Q. B. 302; 10 Jur. 283; 15 L. J., Q. B. 97.

An indictment for a libel on a political dinner, alleged to have a tendency to produce a riot, was, at the instance of the defendants, removed by certiorari.—Held, that a person injured at a riot which took place at that dinner was not a person grieved within 5 & 6 Will. & M. c. 11, s. 3, and therefore, although the defendants were convicted on the indictment, he was not entitled to costs. Reg. v. Caldecott, 1 D., N. S. 556; 6 Jur. 344—

B. Ć.

Where a defendant removes an indictment by certiorari, and recognizances are entered into under 5 & 6 Will. & M. c. 11, s. 2; 8 & 9 Will. 3, c. 33, s. 1; and 5 & 6 Will. 4, c. 33, s. 2, conditioned only for the defendant's appearing, pleading and trying at his expense, and the defendant is convicted, such recognizances will be estreated for non-payment of the costs of the prosecution, under 5 & 6 Will. & M. c. 11, s. 3, though the condition expressed in the recognizances is performed. Reg. v. Hawdon, 1 Q. B. 464; 1 G. & D. 135; 9 D. P. C. 1007; 5 Jur. 1008.

Where the defendants remove an indictment by certiorari, a merely nominal prosecutor is not entitled to costs under the 5 & 6 Will. & M. c. 11, s. 3, as a party grieved or injured. Reg. v. Barnard Castle, 1

Q. B. 246; 5 Jur. 799.

A child, six years old, was found wandering in a parish, within a union in London. It appeared to be destitute, and to have been assaulted and very ill-used. It was received into the union work-house, and there maintained. On its being taken before two aldermen, they urged the guardians of the union to undertake the prosecution of the person who appeared to have ill-used the child. The guardians did so. The defendant removed the case by certiorari, and was convicted:—Held, that the guardians were entitled to the costs of the prosecution, under 5 & 6 Will. & M. c. 11, s. 3, having prosecuted as officers, on account of a fact that concerned them as officers to prosecute. Reg. v. ----, 15 Q.B. 1060; 15 Jur. 55; 20 L. J., M. C. 53; 4 Cox, C. C. 345.

Where an indictment has been removed by certiorari, under 5 & 6 Will. & M. c. 11, s. 3, if the party grieved or injured is, in point of fact, the prosecutor, he will be entitled to costs, although not bound over to prosecute, and although an-

other person, not a party grieved or injured, was bound over to prosecute, and was at the trial in pursuance of his recognizance. Reg. v. Bishop, 6 D. & L. 499; 13 Jur. 538; 18 L. J., M. C. 63—B. C.—Wightman.

A society of attornies of a county had prosecuted an indictment against a defendant for practising as attorney at the quarter sessions of the city and borough, in the county, without being qualified. The defendant removed the indictment by certiorari, and was convicted:—Held, that the society was entitled to costs, under 5 & 6 Will. & M. c. 11, s. 3, as parties grieved. Ib.

A defendant was committed by the lord mayor of London for trial for an indecent assault. An indictment found at the Central Criminal Court was removed into the Queen's Bench by certiorari at the instance of the defendant. The defendant The prosecution was convicted. was conducted by the city solicitor, in obedience to the directions of the lord mayor given at the time he committed the defendant; and the expenses were defrayed out of the city funds:-Held, that the case was not within 5 & 6 Will. & M. c. 11, s. 3, inasmuch as the lord mayor was not personally liable for the expenses, and could not be considered as a prosecutor. And a sidebar rule, taken out to tax the costs, was set aside. Reg. v. Wilson, 1 El. & Bl. 597; Dears. C. C. 79; 17 Jur. 460; 22 L. J., M. C. 53; 6 Cox, C. C. 176.

The sureties of a defendant, on the removal of an indictment for a misdemeanor by certiorari from the quarter sessions, where the defendant has been convicted, are liable to pay the prosecutor's costs, although there is no such undertaking in the condition of the recognizance, or direct provision to that effect in 5 & 6 Will. & M. c. 11, s. 3. Reg. v. Hodgson, 7 Exch. 915; 21 L. J., M. C. 181; S. P., Reg. v. Hawdon,

1 G. & D. 135; 9 D. P. C. 1007; 5 Jur. 1008.

Two defendants being indicted jointly in the Central Criminal Court for conspiracy, one of them applied to a judge for a certiorari, who granted it on his entering into a recognizance for the payment of the prosecutor's costs, in case either defendant should be convicted:—Held, that such terms were reasonable, and within the discretion of the judge; and that the 16 & 17 Vict. c. 30, s. 5, made no difference in this respect. Reg. v. Jevell, 7 El. & Bl. 140; 3 Jur., N. S. 689; 26 L. J., Q. B. 177.

Where an indictment against a corporation, for non-repair of a highway, is removed by certiorari, at the instance of the prosecutor, the prosecutor is not required by 16 & 17 Vict. c. 30, s. 5, to enter into recognizances to pay the defendant's costs, in case of acquittal; indictments against corporations being excepted from the operation of the act. Reg. v. Manchester (Mayor, &c.), 7 El. & Bl. 453; 3 Jur., N.S. 839; 26 L. J., M. C. 65.

An indictment was removed into the Queen's Bench by certiorari obtained at the instance of the prosecutor, who entered into a recognizance, with two sureties, conditioned that he should there prosecute with effect, and perform all such orders and things as the court should direct. The defendants having been acquitted:—Held, that, as the recognizance was not in the form prescribed by 16 & 17 Vict. c. 30, s. 5, i. e., conditioned to pay the defendants' costs on acquittal, they were not entitled to costs. Reg. v. East Stoke, 6 B. & S. 536; 34 L. J., M. C. 190.

The 38 Geo. 3, c. 52, s. 12, providing that no indictment shall be removed into the next adjoining county, except the person applying for such removal shall enter into a recognizance in 40*l*. for the extra costs, does not relate to indictments

sent by K. B. to be tried in the next adjoining county, after a removal thither by certiorari. Rex v. Nottingham, 4 East, 208; 1 Smith, 51.

#### 5. Practice.

Where the order of a town council, being brought up by certiorari, is quashed, on motion, with costs, the court should decide who is to be charged with costs as prosecutor of the order, and the party should be named in the rule. Reg. v. Dunn, 5 Q.B. 959; D. & M. 737; 8 Jur. 773; 13 L. J., Q.B. 237.

Where an indictment has been removed by certiorari, and judgment given upon it, the court will notice the contents of such indictment on a motion respecting costs of the prosecution, without having the record brought before them by affidavit. Reg. v. Waldegrave (Earl), 2 Q. B. 341; 1 G. & D. 615; 6 Jur. 502.

Where an application was made to remove an indictment by certiorari by one of several defendants, the court granted it upon his entering into recognizances to pay the costs, not only if he was, but if either of the other defendants was, convicted. Reg. v. Foulkes, 1 L. M. & P. 720; 20 L. J., M. C. 196—B. C.—Patteson.

Where one of several defendants obtained a certiorari for the removal of an indictment into the Queen's Bench, and a procedendo was moved for on the ground that the certiorari improvidè emanavit, inasmuch as the other defendants had not joined in the application for the writ, and had not, under 5 & 6 Will. & M. c. 11, s. 3, entered into recognizances to pay the costs of the prosecution in case of their conviction :-Held, that the defendant, on whose application the certiorari was granted (being a person to whose responsibility there appeared no objection), might enter into recognizances to pay costs in case of the conviction of himself or of the other defendants, or either of them, and that

under these circumstances the procedendo would not be ordered. Reg. v. Probert, Dears. C. C. 30.

A recognizance, in the margin of which there was the name of the county of W., was stated to have been taken before "J. T., esq., one of the justices for the county of W.":—Held, that it sufficiently appeared, that the recognizance had been taken in the county for which J. T. was a justice. Reg. v. Hodgson, Dears. C. C. 14; 7 Exch. 915; 21 L. J., M. C. 181.

One of three defendants, jointly indicted for misdemeanor at the Central Criminal Court, obtained a certiorari from a judge at chambers, to remove the indictment into the Queen's Bench, and entered into recognizance, conditioned to pay the costs of the prosecution if he was convicted, to appear, plead, and The other defendants concurred, but entered into recognizance only to appear, plead, and try. motion for a procedendo, it was suggested that this course created hardship on the prosecutor, as, if the party removing were acquitted, but the other convicted, the prosecutor would have no security for costs :--Held, nevertheless, that the judge had a discretion, the exercise of which the court would not review, and the procedendo was refused. Reg. v. Wilks, 5 El. & Bl. 690; 25 L. J., Q. B. 47.

A defendant had removed an indictment by certiorari, and had entered into the usual recognizances with two sureties. After a verdict of guilty at the assizes he obtained a rule for a new trial on payment of costs. Without paying the costs he gave notice of trial for the next assizes to the prosecutor, who obtained a judge's order, by which, if the costs were paid by a certain day, the notice of trial was to stand good, but otherwise to be set aside. The defendant did not pay the costs, did not try the indictment, and died within a few weeks. The prosecu-

tor obtained a side-bar rule to tax his costs, to be paid by the defendant or his bail:—Held, that the bail were not liable to pay the prosecutor's costs, because they are only liable when the principal has been convicted; and that after the granting the rule for a new trial it could not be said that there had been a conviction within the true meaning of the recognizance, and that neither the defendant's default in paying the costs, nor the judge's order setting aside the notice of the trial, did away with the rule for the new trial, or restored the original verdiet. Reg. v. Bowen, 7 D. & L. 312; 19 L. J., Q. B. 63 — B. C.— Patteson.

Held, also, that whether liable or not, the bail ought not to have been mentioned in the side-bar rule for the taxation of costs. Ib.

If an indictment against several defendants is removed by certiorari without the consent of one, he cannot be compelled to pay the costs of the trial, although he may have appeared and pleaded to the indictment, and been tried on it. Reav. Hassell, 5 D. P. C. 531; 2 H. & W. 321.

Under 5 & 6 Will. & M. c. 11, s. 3, the representatives of the prosecutor are entitled to the costs taxed during his life, though no personal demand was ever made by him. Rex v. Chamberlayne, 1 T. R. 103.

Where a defendant had removed an indictment from the sessions by certiorari, and was convicted, but died before he could be brought up for judgment:—Held, that his bail was liable to pay the taxed costs of the prosecution, under 5 & 6 Will. & M. c. 11, s. 3. Rex v. Turner, 4 D. & R. 816; 3 B. & C. 160; S. P., Rex v. Finmore, 8 T. R. 409.

Where a defendant had removed an indictment, entered into a recognizance, been convicted and fined, and the prosecutor received onethird thereof, so much was deducted out of the sum for costs. Rex v. Osborne, 4 Burr. 2125.

On a defendant's acquittal on an information, he is not entitled under 4 & 5 Will. & M. c. 18, s. 2, to costs, beyond the extent of the recognizance entered into by the prosecutor in 20l. under that act. Rex y. Filewood, 2 T. R. 145.

The court, on granting an information, will not require the prosecutor to give security for the costs, in case the defendant should be acquitted, beyond the extent of the recognizance in 20l. required by 4 & 5 Will. & M. c. 18, s. 2. Rex v. Brooke, 2 T. R. 190.

An indictment removed by the defendant, and made a special jury cause by the prosecutor, came on to be tried, and was immediately re-The order of reference ferred. stated, that if the arbitrator should be of opinion that the defendant was guilty, and the prosecutor entitled to costs, the defendant agreed to pay the costs. The arbitrator did so find:—Held, that the prosecutor could not recover the costs of the special jury, since the judge had not certified for those costs pursuant to 6 Geo. 4, c. 50, s. 34; and the order of reference did not expressly give a power of doing so to the arbitrator. Rex v. Moate, 3 B. & Ad. 237.

Where a judge at the assizes refused to try an indictment for a misdemeanor (perjury), manifestly bad on the face of it, but did not order it to be quashed, and the prosecutor preferred another indictment for the same offence, and removed it into K. B., the court would not call upon the prosecutor to pay the costs of the first prosecution, before he proceeded with the second. Rex v. Tremaine, 5 D. & R. 413; Rex v. Tremaine, 5 B. & C. 761; R. & M. 147.

When a prosecutor has removed the record by certiorari, if the trial is put off by reason of the act of God, the defendant is not liable to the costs of the day. Rex v. Barrett, 2 Lewin, C. C. 263—Patteson.

Where on removing an indictment from the sessions, by certiorari, a recognizance is given by two in 20l. each, under 5 & 6 Will. & M. c. 11, ss. 2, 3, to secure the costs, such recognizance will not be discharged till all the costs are paid, though they exceed 40l. Rex v. Teal, 13 East, 4.

Upon an indictment for perjury, removed by certiorari, if the prosecutor gives notice of trial to the defendant, and withdraws his record countermanding his notice in time, he shall pay costs to the defendant. Rex v. Bartrum, 8 East, 269.

If a prosecutor, having removed an indictment by certiorari, gives notice of trial for the assizes, and brings down the record, and withdraws it after it has been entered for trial, the judge at the assizes cannot order the prosecutor to pay the defendant the costs of the day; but a motion must be made in the court of King's Bench. Rew v. Watton, 4 C. & P. 229—Bolland.

#### 6. Taxation.

The court of Queen's Bench has no jurisdiction to review the taxation, by the clerk of assize, of the costs of an indictment for libel on the crown side of the assizes. Reg. v. Newhouse, 1 B. C. C. 129; 22 L. J., Q. B. 127—Erle.

### 7. Enforcing Payment.

Where a side-bar rule is issued under 5 & 6 Will. & M. c. 11, s. 3, and an attachment is moved for by the prosecutor for non-payment of the costs, it is not necessary to have an affidavit that the prosecutors are the parties grieved. Reg. v. Hills, 2 El. & Bl. 176; 17 Jur. 714; 22 L. J., Q. B. 322.

Where costs of the prosecution of an indictment removed by certiorari have been proved as a debt un-

der the defendant's bankruptcy, the court will not issue an attachment against him, or estreat his recognizance for non-payment, although they were not taxed in the regular course until after the bankruptcy; but such proof is no discharge of the bail. Reg. v. Hills, 2 El. & Bl. 176; 22 L. J., Q. B. 322; 6 Cox, C. C. 174; 1 C. L. R. 575.

On the removal by certiorari of an indictment for disobedience of an order of sessions, the defendant and two sureties entered into the usual recognizance under 5 & 6 Will. & M. c. 11, s. 2, which made no mention of costs. The defendant was convicted and attached for non-payment of the costs, and the recognizance was estreated into the Exchequer. On the petition of the defendant and his sureties, the court stayed the proceedings on the recognizance as regarded the defendant, on account of his poverty, but without prejudice to the liability of the sureties. Reg. v. Thornton, 4 Exch. 820; 19 L. J., M. C. 113.

Several defendants were found guilty of a nuisance. The prosecutor being entitled to costs, as a party grieved, under 5 & 6 Will. & M. c. 11, s. 3, obtained a rule for taxing the costs as against all:—Held, that, upon non-payment of the costs, an attachment against one was regular. Reg. v. Dobson, 9 Q. B. 302; 10 Jur. 905; 15 L. J., Q. B. 376.

#### LIX. PARTICULAR OFFENCES.

# Compounding Felonies and Informations.

Felonies.]—The law does not authorize a private person to forego a prosecution upon any terms; and even if a promise is given and broken in such a manner as a jury would consider scandalous, yet, in point of law, that will not make any differ-

ence. Reg v. Daly, 9 C.& P. 342-

Gurney and Erskine.

If, in an indictment for compounding felony, it is averred that the defendant did desist, and from that time hitherto had desisted, from all further prosecution; and it appears, that, after the alleged compounding, he prosecuted the offender to conviction, the judge will direct an acquittal. Rex v. Stone, 4 C. & P. 379—Bosanquet.

Informations.]—The 18 Eliz. c. 5, which prohibits the compounding of any offence upon colour or pretence of process, or without process upon colour of any offence, against any penal law, does not apply to offences cognizable only before magistrates; and an indictment for compounding such an offence will be bad in arrest of judgment. Rew v. Crisp, 1 B. & A. 282.

A popular indictment must not be compounded after conviction. Brery q. t. v. Levy, 1 W. Bl. 443.

On an indictment on 51 Eliz. c. 5, s. 4, for compounding an offence against 13 Geo. 3, c. 84, s. 13, and taking money without process to prevent an action being brought:—Held, that the party so doing was liable to the punishment prescribed by the former act for taking such penalty without leave of a court at Westminster, or without judgment or conviction. Rexv. Gotley, R. & R. C. C. 84.

A. threatened B. that he would inform against him for selling spirits without a licence, unless B. would give him a sum of money. B. had not, in fact, sold any spirits, but he gave A. the money to prevent an information:—Held, that A. was indictable under 18 Eliz. c. 5, s. 4, although B. had not committed any offence, and although no information was ever preferred, nor any process sued out. Reg. v. Best, 9 C. & P. 368; 2 M. C. C. 125.

### LIX. EXTRADITION TREATIES.

In general, 622.
 With America, 623.

#### 1. In General.

By 29 & 30 Vict. c. 121, s. 1, "warrants of arrest and copies of "depositions, signed or taken by or " before a judge or competent mag-"istrate in any foreign state with "which her Majesty may have en-" tered into, or may hereafter enter "into, any treaty for the extradition " of fugitive offenders, or persons "accused of crime, shall henceforth " be received in evidence if authen-"ticated in the manner following, "that is to say, if the warrant of "arrest purports to be signed by a "judge or other competent magis-"trate of the country in which the "same shall have been issued, and "if the copies of depositions pur-"port to be certified under the " hand of such judge or magistrate "to be true copies of the original "depositions, and if the signature " of the judge or magistrate in each " case shall be authenticated in the "manner usual in the respective "states or countries by the proper "officer of the department of the " minister of justice, and sealed with "the official seal of such minister: " and all courts of justice and mag-" istrates in her Majesty's dominions "shall take judicial notice of such " official seal, and shall admit the "documents so authenticated by it " to be received in evidence without " of."

By s. 2, "the act shall be con-"strued with the 8 & 9 Vict. c. "113, for facilitating the admission in evidence of official and other documents, and also with the 14 & 15 Vict. c. 99, amending the law of evidence."

By 30 & 31 Vict. c. 143, "the "duration of the act is limited to "the 1st September, 1868."

These provisions, authorising the admission in evidence of copies of depositions certified in the manner therein specified, are inapplicable where the original depositions are produced, and such original depositions may be received in evidence without being so certified. *Dubois*, *In re*, alias *Coppin*, 12 Jur., N. S. 867; 36 L. J., M. C. 10; 14 W. R. 24; 15 L. T., N. S. 165; 2 L. R., Ch. App. 47—C.

"As to the forms of the warrant of apprehension and of commitment," see 8 & 9 Vict. c. 120.

#### 2. With America.

By 6 & 7 Vict. c. 76, s. 1, in case requisition should be made at any time by the authority of the United States, in accordance with a treaty between them and this country of the 9th of August, 1842, for the delivery of any person charged with piracy committed within the jurisdiction of the United States, who shall be found within the territories of her Majesty, it shall be lawful for one of the secretaries of state, by warrant under his hand and seal, to signify that such requisition has been made, and to require all justices of the peace to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to gaol for the purpose of being delivered up to justice :—Held, that the statute has reference, not to acts of piracy jure gentium, which equally cognisable by all nations, but only to such acts as are constituted piracy by the municipal law of the United States, and which are, therefore, not punishable elsewhere than in their jurisdiction. Tivnan, or Ternan, In re, 5 B. & S. 645; 11 Jur., N. S. 34; 9 Cox, C. C. 522; 33 L. J., M. C. 201; 12 W. R. 858; 10 L. T., N. S. 499.

It is sufficient if a warrant of a justice, ordering the apprehension of a person, in compliance with this statute, is made in the form given by 8 & 9 Vict. c. 120. Ib.

In order to enable a justice of the peace to issue his warrant under the statute for the apprehension and committal for trial of an accused person, it need not appear that there was an original warrant for his apprehension in the United States, or depositions taken against him there. Ib.

The warrant need not allege that the evidence before him was taken upon oath. Ib.

In time of peace any act of depredation on a ship is prima facie an act of piracy: but in time of war between two countries, the presumption is that depredation by one of them on a ship of the other is an act of legitimate warfare. It is immaterial whether the act was done by soldiers or volunteers, and whether it was commanded by the belligerent state, or when done ratified by it. Ib.

The 6 & 7 Vict. c. 76, following the language of a treaty between this country and the United States of America, enacts, that all persons charged with the crime of murder, or assault with intent to commit murder, or with the crime of piracy, or arson, or robbery, or forgery, or the utterance of forged paper, may be delivered up to justice, means such acts as amount to any of those offences according to the law of England, and the general law of the United States, and does not comprise offences which are only such by the local legislation of some particular state of the American union. Windsor, In re, 6 B. & S. 522; 10 Cox, C. C. 118; 11 Jur., N. S. 807; 34 L. J., M. C. 163; 13 W. R. 653; 12 L. T., N. S. 307.

A paying teller of a bank at New York, and as such was accountable for the cash at the bank, kept the paying teller's book, called the proof book, and proved his cash by it every day. From this book the general bookkeeper took his figbank on the general ledger from day to day. The book in question was one of the books of account at the bank, and the property of the bank. In it he entered by the paying teller from the receiving teller's books, or from the lists of the de-

The proof book also contained a ures to shew the condition of the statement of the assets of the bank in coin and cash, so that the proof books should each shew each day the exact amount of money in the bank. He falsely and with intent to defraud entered a certain sum in the book as assets of the bank:-Held, that this was not a forgery posits, the money received each day, by the law of England or the genand also the amounts paid out by the eral law of the United States, and, paying teller, or amounts for which therefore, that he could not be givthe bank was responsible each day, en up under 6 & 7 Vict. c. 76. Ib.

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